ENVIRONMENTAL (ECOLOGY) LAW AS INDEPENDENT LAW SCIENCE DISCIPLINE

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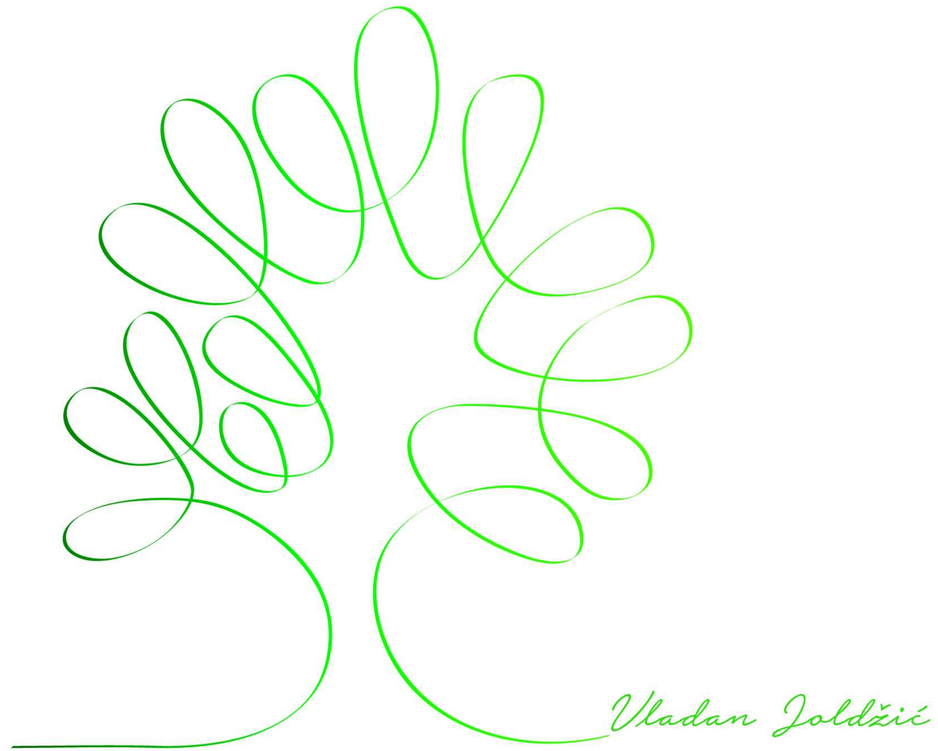

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TABLE OF CONTENTS

CHAPTER 1.

INTRODUCTION - ENTERING INTO MATTER OF ECOLOGY LAW

1.1. Introductory Remarks

Developing of the "Environmental (Ecology) Law as Independent Law Science Discipline" had been based on the:

- Serial of authors' articles (published in the time of the Year 1986 – 1988) as well as on the
- Lesson on the invitation for plenary presentation obtained from the Serbian Academy of Sciences and Arts (SANU): "Need for Developing of Ecology Law as the Branch of Law Sciences and Uniform Part of Positive Legislature of Yugoslavia", for scientific meeting "Role of Science in Protection and Developing of Environment in Republic of Serbia (May 17th, 1988, Belgrade)'', oriented exactly on the possibility to form specific independent law and legal discipline, as well as such following

- Project of the author on the "Possibilities to form Elements Necessary for the Establishing Ecology Law as independent law science discipline".

First complex results of mentioned multi-year project work were exclusively printed by the University of Belgrade and ELSA, for the *ELSA - European Law Students Association* "First Ecology Law School (Zlatibor, May 1996)[1]", and again, but as expanded and revised edition, based on the sustained research efforts of the author, on the Republic of Serbia Ministry for sciences request, at the year 1999, precisely under the name: "Ecology Law - General Part, or on the Elements Necessary for the Independent Law Science Discipline Establishing[2]''.

In this period (Year 1988th – 1996th) we insisted on the *Ecology Law* forming as the *systematized* branch of law science, expressing our schemes for such effort. Long time our ideas and efforts had been much broader than of many authors, which can be seen, for example, within American Professor Gelobter's *Digeste*[3]. In this period scientists simply had not manifested any comprehensive idea about the:

- *General object* of *Ecology Law* (Scientific facility) defining,
- Determination of the specified *general aim* (*goal*) of the Ecology (Environmental) law as scientific and practical branch, nor
- The idea about *the methods* needed for this law science and legal discipline, or

[1] Joldzic (1996a).

[2] Joldzic (1999). One of reviewers for mentioned editions was Professor Popović, Dr. Slavoljub, long time member of the *ICEL -International Council of Environmental Law*, at the same time international organization of law scientists and the Advisory body for the General Assembly of the UN.

[3] Professor Gelobter (1992) *Digeste* really one completion (in two books) of the environmentally oriented texts of numerous authors, published previously as articles in scientific journals, from London to Washington.

- *Connections* toward another law branches, as well as
- *System*, and, starting from the idea about the system,
- *Structure* of the *Environmental*, or, if you wish, *Ecology Law*.

We think that you will admit that any scientific branch as the specific science discipline cannot be formed and observed at all without such starting elements. Quite contrary, without mentioned elements it is possible only to speculate about some, but not numerous, parts of reality and relationship toward or regarding them, of course of environmental importance, although it is possible to analyze some of them precisely and in-detail.

In the case of *Ecology* (*Environmental*) *Law*, in the time of eighties, or long time of nineties, no one of previously mentioned science discipline mosaic elements had been deeply threatened and presented, especially not at the comprehensive way, neither through the texts like Gelobter's *Digeste* or any other scientific text, especially not as description of needed and enough for the *Ecology* (Environmental) *law* as distinct and comprehensive law science discipline. Contrary to this, from the one side, authors around the Globe had contemplated on the needs for *Environmental law* developing[4], but had not contemplated on ways or methods how to achieve this. From the other side some of scientist analyzed deeply and precisely only some separate but deeply observed parts of complex problems, not a problem of *Environmental Law* developing as an entity[5].

From the start of our work, opposite to all the authors of that time, we had insisted, and we insist now, at the need to respect general methodological request of scientific work, at the level of *Ecology Law*

[4] See for example: Shaposhnikov (1975) and Tatevosov (1984).
[5] See, for example: Tautenberg (1984), pp 233-237, Beckerman (1992), pp 481- 496, and Freeman (1992).

also. Precisely: On the obligations for constructing, even as a draft, mentioned elements of:

1. Defining of the *General subject* of the *Ecology Law* , and
2. Defining of the *General aim*.

Having this in mind:

1. Précising Methodological apparatus,
2. Explaining of the connections between the Ecology Law and some other branches of Law science,
3. Possibilities for theoretical and practical work on the Ecology Law Systematic, elements for which we think that are this minimum of needed and enough components for real scientific approach to the Ecology Law field, and
4. Reflections on the inherent principles of observed branch in developing.

In our mentioned text prepared for the Serbian Academy for Sciences and Arts we produced their short draft, evolving this draft to useful level for the mentioned ELSA's book, then, elaborating them much wider through our multiyear work and numerous texts.

Our researching also have significantly indicated at the facts that *Constitutional Law* and *International Public Law* as science and practical disciplines have strong mutual connections and feedbacks with the *Ecology Law*, moreover strong roles through essential principled and legislative elements also, of importance for the *Ecology Law*, especially the *Ecology Law* at the terrains of concrete sovereign states. Of course, if we research *Ecology Law* as science and practical discipline it is really important to recognize such elements and their roles for the processes of *Ecology Law* forming and developing. This is that necessary and sufficient reason for our efforts to explain, through a special part of text, not only relations of

Constitutional Law and *International Public Law* with *Ecology Law* but also roles of importance for its forming and constant developing at the levels of international community and national states.

Of course we also have in mind importance of:

- Public properties' legal regime and with it connected administrative law elements of importance for the Ecology Law, as well as of
- Questions and answers connected with the penal law guaranties for Ecology Law rights, obligation, duties and responsibilities.

All previously recognized and designated problems and questions, as well as many other with them logically connected, have to be adequately grouped in special integral parts of our study mosaic, analyzed, explained and presented through specific order. We just do it with the book that present to our readers, forming and presenting its six logical parts, and their subparts, that processed:

1. Entering into Ecology Law mater,
2. Significance of developing paths that start from ideals connected with ecologically oriented ideas and going to processes through ecology legal relations are declaring,
3. Significance and roles of constitutional law and international public law elements for Ecology Law,
4. Ecology Law principles, their roots, structure and significance,
5. Public properties' legal regime and administrative law elements of importance for the Ecology Law, and
6. Penal law guaranties for the Ecology Law rights, obligations, duties and responsibilities.

We emphasize that entering in our actual scientific researching we also have in mind that from our first environmentally oriented texts to results

of this specific researching, which are published in this book, run nearly thirty years. Sufficient time for another deeper look at the problem that, meanwhile, from our first lessons at the academies of sciences and arts (Serbian, Croatian, Czech, Hungarian, Polish…), became theme around the World. This is simple reason for our second look at the problem, in this time and in this study. Look based on the fact that the World is in deep process of transition.

1.2. Authors Personal Perception on the Logical Entrance into Ecology Law Subject Matter

Ecology Law, from year to year in the constant process of much faster and faster developing and producing more complex segment of the entire law, is engaged with grooving number of ecology-law relations[6], which are expressed:

1. At the levels of sovereign states,
2. Between states, and at the
3. International law level.

Working parallel at such complex matter of researching and developing, aiming many expressed ideas and realized results, we think that it is necessary and possible to research *Ecology Law* much more comprehensively and deeper than we can meet in major part of law-science works. Also, we think that, at this moment, is present urgent need to develop *Ecology Law* more systematically, analogically to branches of law science and legislations developed in earlier times. For example: Criminal law or Propriety law. This perceiving, although has base in cognition of the norms that have attribute “ecology”, by no way can to go

[6] About the Ecology-Law relations we shall report on later, as one of the key questions of our researching.

around and overlook *relations between subjects of law*, that are regulated by those norms. Relations present in reality, not only at the levels of:

1. Law science opinions, but also at the levels of
2. Sovereign states' legislations, or
3. The International Public Law level.

This means that we have, at first, duty to observe and understand those relations that are presented on the levels of national states, and, of course, at the international level, accepted and regulated by the norms of sovereign states legislations.

Aiming that the necessary set of elements, which make totality of the ecology-law relations, is more complex from day to day, as well as more present in reality, we think that the *Ecology Law*, as the branch of science and legislations, is obvious in reality, but not yet broadly and adequately theoretically perceived, systematized and logically, this also means theoretically, completed. In such access and aiming of the *Ecology Law* as complex structure in the process of obvious forming and developing we are followers of the normative-sociology seeing of law as developmental phenomenon, access defined as aiming of the law through the basic legal elements:

1. *Norms*, as well as
2. *Relations* regulated by them, and present in reality.

We accept seeing expressed by Pasukanis[7], or Perisic[8], strong followers of Diguits aiming that the world of the law is not closed ideal

[7] As Pašukanis (1958) said: "If some relations have been formed in reality, this mean that adequate law have been formed, but in case that we have some norms in legislation, but not adequate relations in reality, this mean that was expressed only try to make a law, but try without success", p. 100.

world of norms, separated from reality, but is world of human will that can be seen through concrete manifestations and effects by them made[9]. We point out that the number of such manifestations, their diversity, and more and more clearly expressed interconnections, are of great significance for aiming of fertile process of legal notions and institutions forming, specific for *Ecology Law*. We think that is possible, in this moment, to attain their global aiming, as well as logical concreting[10] and knowledge. This is, we think, necessary, for further understanding and developing of the *Ecology Law* at the level of:

- Treating different kinds of objects that compose *ecos*[11],
- As well as different: *Positive* and *negative* accesses to those objects, or groups of objects.

At the other word, we formed conclusion that is possible to access to the *Ecology Law* as the entirety made by two essential and complex parts:

I - General Part, and
II - Separate Part.

To be precise, *General Part of the Ecology Law* has to be engaged with:

1. Determining of the *Ecology Law Object* (scientific facility),
2. Determining of the *Ecology Law General aim* (goal),
3. Relations between *Ecology Law* and the other branches of law, and
4. *Ecology Law Systematic*.

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[8] Perisic (1964): "It is not sufficient for law to be structured mass of norms, duty of law also is to make certain order of the relations. The established order is mass of the regulated relations in society", p. 2.
[9] Duguit,Tom I, p. 21.
[10] L. *concrescere*, grow together.
[11] *Ecos*, Latin word from the ancient Greek: *οἶκος* (L. *oicos*), home, residence, domicile, in nowadays term in Ecology science that means the World environment.

Processes of aiming and developing *Ecology Law principles* also mean engaging with notions that can be expressed:

- At the same time as notions of the other science disciplines, not the *Ecology Law*, but at the same time useful as *Ecology Law* notions, or
- Primarily and clearly formed as *Ecology Law* notions.

This process of aiming and developing of the *Ecology Law* notions is really very complex, at the same time connected with adoption and finishing of the ecology notions formed preferably by:

1. Number of natural sciences, and
2. Branches of sociology.

Separate Part of the Ecology Law, starting from knowledge of the Ecology Law General Part, has to:

1. Point his energy at the cognition of more numerous mass of ecologically oriented relations, regulated by the elements of legislations,
2. Aim this mass of ecologically oriented and purely ecological relations at the law-logical way,
3. Define and systematize them, and, thus,
4. Help in further process of their legal regulation.

In the explained process of systematization it is possible to perceive whole *Ecology Law* matter from different points:

1. Classifying *Ecology Law* relations as:
   - Relations expressed and treated in states, by their legislation's, or
   - At the level of interstate relations, as well as
   - At the international level;

2. Point of the Ecology Law objects systematization.

We think that is, for really quality aiming of the *Ecology Law matter*, necessary to adopt both points.

In the attempt to contribute *Ecology Law developing*, as a relatively new branch of law science and legislations, our exertion is focused on questions connected with the *General part of the Ecology Law*, as well as at the questions that need answers, for formulating the *Separate part* of this law branch. This is reason why we divide our scientific researching results in two books:

- Environmental (Ecology) Law as Independent Law Science Discipline (Some Observations on the so Cold General Part Fundaments and important Elements), which we, in this moment, present to you, and
- Ecology Law -- Separate Part, which will be presented later.

From the reason of respecting reality of ecological problems multiplication, grooving and developing, from year to year more faster, as well as their strength and complexity, in our work on the *Ecology Law developing*, practically from the very start, we have insisted at really deep ecological subject matter observing, as well as on systematical way, analogically to branches of law science and legislations developed in earlier times. For example: Criminal law or Propriety law discipline. This perceiving, although has base in cognition of the norms that have attribute "ecology'', by no way can to go around and overlook relations between subjects of law, which are regulated by the norms of such law disciplines. Relations present in reality, not only at the levels of:

1. Law science opinions, but at the levels of
2. Sovereign states' legislations, or
3. *The International Public Law* sub-disciplines.

This means that we have, at first, duty to observe and understand those relations that are presented on the levels of national states, and, of course, at the international level, accepted and regulated by the norms of sovereign states legislations.

We think that is possible, in this moment, to attain their global aiming, as well as logical concreting and knowledge. This is, we think, necessary, for further *Ecology Law developing*, at the level of:

- Treating different kinds of objects that compose *ecos*,
- As well as different: *Positive* and *negative* accesses to those objects, or groups of objects, and, of course
- *Relations between subjects of law* arising out of, or related to, environmental: rights, values, obligations, duties and responsibilities.

In the text of presented book we shall express some results of our scientific reflections on central questions connected with the *General Part of the Ecology Law*, starting our expressions with the reflections on the reality of environmental problems uprising and the name of this law science and legal branch.

1.3. Reality of Environmental Problems Uprising

During last few decades we are witnesses of practically all the environmental elements' degradation, problem expressed at the planetary level but many of them enhanced. First signals of this alarming situation have manifested themselves as rapid and endangering reduction of herbal and animal species numbers, reduction of species that have, through centuries, successfully survived all the mishaps caused by the nature itself. We are also witnesses of the human life conditions aggravation in all urban environments. This aggravation is parallel to the enormous development of productive forces during, approximately, passed 100

years[12]. Unfortunately, considering small initial economic and industrial progress, although this aggravation had to be noticed, had not been perceived at the very beginning of its acceleration. The man himself has felt the consequences. At first these consequences had not been big or present at the great areas. Rapid decreasing of certain species' number, for example, whales, has been felt mostly as an economic stroke, but stroke made by overdone hunt. The reason was race for profit. Despite the paradox, today the profit in this area is far lower than it could have been. We are facing the same situation with the excessive usage of forest capacities in many countries of the world. Even though it was considered, at the beginning, as the source of extremely large profit, very soon it proved its economic negativity. But, this is just one part of the problem. The other one, although not so visible, its essence is showing more and more. We must have in mind the extreme importance that forests have for our lives, for e.g.:

- The prevention of erosion,
- Prevention of flood,
- The influence on new basins and natural accumulations making, and today also an
- Influence on quality of the air that we breathe, which is considered as one of the main factors that provides a healthy and productive human life,

From which reasons states, at the International Law level, practically twenty years ago, formed some elements of now famous conventions[13].

[12] Nedeljkovic, D. (1981), pp 17-21.

[13] At first place: International Convention to Combat Desertification in those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa, The United Nations Framework Convention on Climate Change (UNFCCC) and Climate Change

This is just a small part of negative examples that shows man's bad influence on the entire environment[14]. Such examples, in their multiplicity, and with their growing importance, force current states to react immediately to prevent ecologically bad influences. Of course, all those reactions must be adequately socially organized and based on the knowledge, which includes multi-disciplinary scientific approach[15], within which are essential those sciences that can show what and how exactly we should act, in order to preserve and develop our environment, and, at the same time, which acting is negative for the *ecos*. Perceived all of the aspects, in the purpose of efficient reaction towards increasing problems that endanger the environment, we must inevitably use the legal means and facilities. Of course, legal reactions are more and more present from year to year. Legal means are expressed trough formulated, and therefore compulsory attitudes of states about right, or wrong – from this reason forbidden actions, towards the elements and processes of the environment[16]. Law has come to such answers progressively[17]. At the beginning, by the incomplete solutions of solitary problems, as it was the previously mentioned one about the forest funds. But, at the very beginning, this approach has had two sides, which is also in our time, the important characteristic of this problem:

- One side, which has prescribed *what and how it should be done*,
- And the other one that determined *what must not be done*.

Convention, Conventions oriented at the forest protection, hence the protection from serious drought and desertification, which also means from dangerous climate changing.

[14] In the environmental problems researching, special attentions have been pointed at the economic growth based at the profitable logic, especially by: Meadows (1972), and Sahnazarov (1985).

[15] As we can see from the Report of the World Commission on Environment and Development: Our Common Future (1987).

[16] As clearly has been said by academician Lukic Radomir (1981), pp 5-58.

[17] Feliks, R. (1974), at pp 17-19, presented, for example, very detailed explanations about step by step development of the law access to the environmental problems at the example of Ex-State Yugoslavia.

But, it still does not mean that it has been completely accepted in people's consciousness, anywhere in the World, or, what is more important, in the consciousness of the administrations of the governments[18], that have the task of preservation of the ecology values from any danger, or violation, by anyone[19]. All those facts, together with reasons considering profit[20], are, as condition, enough to bring to massive insult of those rules of law, which prescribe and arrange the relation towards the values that are ecological in their being. Therefore, we come to the clear and growing necessity for constant development of the *Ecology* (*Environmental*) *Law*, parallel as a legal science branch and as the part of positive legislatures of sovereign states.

1.4. Reflection Concerning the Name of Subject

Getting into the problem of *Ecology Law establishing and development*, parallel to its perceiving as integral part of the all-inclusive law science, which deserves, at the same time, teaching, scientific researching and study, we have to emphasize obvious fact that the

[18] Nor in the consciousness of the participants in sciences and politics, although they have to be the first which are able to make such access to the matter of the environmental protection. Having that in mind, it is obvious why ordinary men have not formed qualitative attitudes toward environmental problems. Such qualitative attitudes are strongly needed.

[19] See closer: Roman Club Conclusions, from the founding meeting (April, 1968) that Club hold at the initiative of the Aurelio Pecei, vice-president of the Fiat Corporation. Document which clearly concluded that environmental values had not been defined, but, quite contrary many of them had only been quoted and named as recourses.
Ten years later reality confirmed this conclusion, as we can see from the work of Grunfeld, J. (Growth in a Fiat World), p. 93, as well the fact that growing ecological problems and with them connected documents, between them of the UN, from decade to decade also confirmed the need of the ecological values protection, which can be seen as well from numerous scientific texts oriented at such protection, which above all can be seen from their conclusions.

[20] Stojanovic, Z. (1992) more than 20 year ago explained profit as strong negative influencing factor for the environmental protection.

Ecology Law is subject of studies at many universities. For example: Berkeley University of California, Hague Academy of International Law - United Nations University, Lancaster University, Moskovski univerzitet, and the others.

Many lawyers, while researching the segments, and gravitating toward the whole subject of the *Ecology Law*, point out at the necessity of its parallel scientific and practical development, as well as at the complexity of the problem, expressed even in the subject's name defining, in reference to the law branch in developing process. Among the first who had paid full attention on this matter, practically 40 years ago, had been Professor Dr. Popovic Slavoljub, who had reflected two times on the matter, at the year 1975[21], and again at the 1980[22]. Popover had spoken about the *Ecology Law* problems, going further than Despaux[23], which had emphasized only at the logical differences of the, at the same time, *terms* and *the objects* of law treatment:

- Nature, and
- Life surrounding.

Idea of the new law branch developing, full power got at the end of the eighties. For example, between her patrons had been Jakovljev and Petrov. Nor they, nor the other lawyers, which was characteristic for this time, not only in Russia, did not formulate:

- Any drawing of the *ecological values' general definition*, observed from the law aspect, and

[21] Popovic, S. (1975) Zaštita vazduha i voda od zagađivanja (Water and Air Protection of the Soiling), p. 12.
[22] Popovic, S. (1976) O pravu zaštite životne sredine ili ekološkom pravu (About the Environmental Protection Law or Ecology Law), in: *Collection of the Law Faculty*.
[23] Despaux, M. (1980a), p. 12.

- Consequently, not any *definition of the general object* of the *Ecology Law* treatment.

Quite contrary, they had emphasized only necessity for the *Ecology Law* forming, pointing out at the fact that had been formed conditions for such attempt, citing text from many sources, around the World, but mainly not the law science or branch literature[24].

Speaking from different points about the ecology values' law treatment, many foreign authors use notions: "Ecology Law" and "Environmental Law''. In Europe dominates narrower anthropocentric access in formulating the name of this law branch in development. British authors use notion "Environmental Law[25]'', French "Le droit de l'environnement[26]'', Italian: "Diritto dell ambiente'', expressions literally translated at the English language as the "law of the surroundings'', or, much better, as the "law of the environment''. Many of law experts from former Yugoslav republics use phrase "Environmental law'', but they understand under the word "environment" only the surroundings where people live, or reside, which is approach formed only at the linguistic base, not at the base of biological, sociological, or law science. Here are presented, also, but in a smaller number, some authors which speak about the "law on the protection of nature'', forgetting that United Nations, in their documents, through more than 30 years, has always spoken about the environment and the environmental elements, precisely talking about environmental elements as the natural and, at the same time, values created by human work. With these texts UN has defined clear anthropocentric access to the *Ecology Law* development. This, by the UN formulated access, ex state Yugoslavia formally had adopted by the

[24] See, for example: Jakovljev (1987), pp 42 – 45 and Petrov (1987), pp 34-39.
[25] See: *De Montfort University Environmental Law Institute Annual Report 1995*, Leicester, England.
[26] See: Despaux, M. (1980b), p. 268-269, and Preieur (1984), p. 3.

ratification of the, in our text mentioned, UN documents[27], which fact is, in this moment, important for the Republic of Serbia, as formal successor of the mentioned state Yugoslavia, that inherited legal rights and obligations at the field of the Ecology (Environmental) law.

We have to emphasize that such approach, of mentioned small number of law experts, which use term "environment" only for surroundings where people live or reside[28], is much narrower, spaciously and by the object, than the wider approach to terms: *Ecos* – Ecology – *Ecology Law*. This means that using of the term "environment" only for surroundings where people live, or reside, is not logically complete – not formed at the adequate way. Such law-scientific approach we do not accept. We are supporting its theoretical perceiving as the "*Ecology Law*'', having in mind that previous logical orientations lead to a treatment only of some parts of the *ecos*, but, it is obvious that it should be watched totally and globally. We are pointed on few facts:

- Phrase "surroundings" is narrower than the phrase *oicos*, from which is derived the word environment,
- Law has taken many phrases of the ecological science, especially through the documents of the *International Public Law*.

Adopting of the biological and sociological form of notion "ecology" is logical and the only possible way of doing, having in mind that ecology recognizes and establishes:

- Real,
- Positive,
- Negative, and

[27] For example: Register of the UNEP: UN Program for the Environment of Man (1986).
[28] At the Republic Serbia expressed even through defining the name of the law: Zakon o zaštiti prirode (Law for the Protection of the Nature), first used at the year 1975.

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ecological relations. Law has the obligation to research them as a *special sort of the social relations* and, accordingly, to regulate them by, for this task, specifically dedicated and formed positive norms. Thus law has to use not any, but the vocabularies of ecology and connected sciences. This, in no case, means that having in mind that men create generally anthropocentrically oriented law and legislatures we have liberty to make all its constitutive elements, as the constructive elements of the science structure and at the same time positive law, with the narrower approach and view, nor to do such mistake in the field of the *Ecology* (*Environmental*) *Law*.

We have to emphasize that, through recent years, increasingly dominates the opinion that "we shouldn't spoil the *Ecology Law* with the Environmental Law, its constitute shapes, which regulate relations, not only of men as the individual person, but also relations of artificial persons, toward different material values and processes, that, in their entity, represent great and valuable part of the ecological systems. Also, that they regulate it with a precisely defined aim of those values protection, having in mind their importance for mankind[29]". We emphasize that, in many elements, the *Ecology Law* and the *Environmental Law* can cover each other. We point out that if we observe *the environment* as narrower part of reality than *the Environmental Law* is just the part of the *Ecology Law* totality, and that this fact is quite often forgotten. In this access we adopt the attitude of Berkeley University lawyers[30]. Attitude that is, at the nowadays, more often present in Europe. Through more than last twenty years has been pointed out that the observing branch of law, the *Ecology*

[29] Paraphrased on the base of Cano (1985), pp 401-402.
[30] Furthermore, they publish, for many years, review that threats environmental matter, in this process they use notion: "Ecology Law". See any Volume of the *Ecology Law Quarterly*.

Law, regulates many different shapes of the *ecological relations*, and that this fact is fundamental characteristic of the mentioned law branch in constant development[31]. We also think that the phrase "*Ecology Law*" is wider than "Environmental law'', containing at the same time term "Environmental law''. Also that the *Ecology Law* not only regulates ecological relations, but regulates more shapes of the ecological relations than the "Environmental Law" does. In the former Yugoslav, especially Serbian law literature, we can also find the opposite opinions. But such opinions have not been explained by the authors, they only propose using of the term "Environmental Law" as well as the term "Law on the environment". We think that this is not a valid scientific approach.

It will be useful to give attention, although for a small moment, on the phrases "environmental" and "*ecos*'', having in mind the significance of their meaning for general problem which we treat in our book. For solution of this problem we find a great help in the "Webster Dictionary[32]''.

For example, some of ex Yugoslav, as well as Russian lawyers, *ecos* understand only as the environment, in its narrower, not the wider biological, geographical and lexical meaning. They, starting from this point, comprehend the "Environmental Law" as the "*Ecology Law*" - synonyms. This comprehending is not correct. "The International Webster New Encyclopedic Dictionary of the English Language" says: "Environment -- All the physical, social and cultural factors and conditions influencing the existence or development of an organism or assemblage of organisms[33]''. Clearly: Factors at defined area of observed organisms or communities' existence. The notion *ecology* explains as the "multi-

[31] See: Tautenberg, J. (1984), pp 233-237.
[32] The International Webster New Encyclopedic Dictionary of the English Language (Year 1973).
[33] See The International Webster New Encyclopedic Dictionary of the English Language, p. 329.

disciplinary science... that studies the relationships between organisms and their total environment, both animate and inanimate, also "the branch of sociology, concerned with human populations, their environment, spatial distribution, and resulting cultural patterns, *at cetera*[34]''. As can be seen from this abstract, Ecology is engaged with the relations between all the elements, live and non-alive, in their totality. At the other word, those relations are the objects of the Ecology science[35].

Notion *ecos* (house, domicile) nowadays, in the Ecology as science discipline, means the entire environment of the world. Starting from this definition, modern Ecology defines *ecos* as being in his totality -- all live and not alive elements in constant interaction at the Planet[36]. This notion is much wider than the notion "environment'', wider by the:

- Spacious,
- Subject matter, and the
- Functional volume.

As such, this notion has been adopted by many science branches, between them law science[37], but has not been developed.

From previous definitions logically proceed that *Ecology Law* is law branch that regulates questions of all the factors and conditions that influence at the being of the organisms, or assemblage of the organisms (also at the human society), as well at the protection of the partial domicile and the totality of the *ecos*. Environmental Law treats, at the other side,

[34] Ibid, p. 312.
[35] Enzensberger, Hans Magnus (1974), p. 157.
[36] Term *ecology* firstly had been formed and explained by Ernst, Heinrich Philip August Haeckel (1866) through his book: *Generelle Morphologie der Organismen. Allgemeine Grundzüge der organischen Formen-Wissenschaft mechanisch begründet durch die von Charles Darwin reformirte Decendenz-Theorie* (General morphology of organisms. General Principles of organic forms-Science mechanically founded by the Reformed of Charles Darwin-Decendenz Theory).
[37] For example see: Blecher, Sammel (1972), pp 1-90 and Popovic (1975), p. 12.

defined surroundings and do not treat totality of relations and interconnections between the all live and not alive. From this point of view *Environmental law* is logically narrower construction than the *Ecology Law*. This is the main reason why we use notion *Ecology Law*. We point out at the fact that different shapes of the Environmental law, with their own results, produce great number of the *Ecology Law* constitutive elements.

1.5. Necessity and Ways of Legal Approach to the Problems of the Ecology Values Protection

1.5.1. Introduction

Nowadays, considering *Ecology Law*, we are aware of the necessity to give immediate gradual consideration to this matter, with special attention to its two sides:

1. First one, which is expressed at the International law level, and
2. The second one as the part of the each sovereign state law and legislature.

Knowing that the *Ecology Law* has:

1. Reasons of its existence and development,
2. The base of its phenomenon, upon which it grows,
3. The logic and methods of forming and being's performing,
4. As it has the aims it wants to accomplish,

It is clear that we need to see and try to explain all of them, at least rudimentary.

The *Ecology Law* can be composed in two major parts, as practically all branches of law are: General and Separate, from simple reason that *Ecology Law* possesses:

1. Elements that can be named general, from the reason of their presence in practically all the elements of the *Ecology Law*, and
2. The elements that can be located in second – we shall name this: *Separate Part of the Ecology Law*.

Elements from the General part, by their logic, are present on the wholeness of the *Ecology Law* -- practically in the every composing element of the *Ecology Law*. Such are, for example: *principles* of the *Ecology Law*.

At the other side are elements that can be differentiated mutually, as particular logic and legal constructions by which *Ecology Law* relations are concretized and realized in reality. Therefore, we have named them: The elements of Separate Part of the Ecology Law. Such are, for example, legal constructions for the regulation of law-ecological relations in connection with the narrower subjects, as: water, air, or soil, are, which means the elements of *ecos* in totality.

As we comprehend presence of those elements we have called general, as well as second mentioned elements, by which ecological relations become reality, through process of ecological relations concretizing, it is quite logical to divide our issue on two fundamental logical parts:

I -- General part of the Ecology Law; and

II -- Separate part of the Ecology Law.

Of course we should have in mind that this means logical classification of the *Ecology Law elements*, not their total functional separation in reality. Those two major parts have formed really interactive unit.

1.5.2. Ecology Values as Topic of The Scientific Observation

Through complex process of researching, pointed at the totality of ecological processes and connections, Ecology science had to observe

values of the *ecos* by which all ecological processes have been enabled, as constant and renewable range of phenomenon, by which the known life has been formed. Such task has been done shortly after the appearing of the Ecology science as biological discipline. In an expanding process, the Ecology science used, and is still using, knowledge of the other serious scientific disciplines, which, together with the Ecology science, have came in to the process of ecological knowledge developing[38].

Ecology science, using the analyze, as general scientific method, put forward, as the basic values, *group objects,* which appear as elements of the whole ecology issue:

- Water and water current,
- Soil,
- Air, and
- Live nature, then
- The energy, bearing in mind the importance of the all of its forms of reflection for live and not alive nature[39].

So, the Ecology science has opened itself a door to the specific and deeper researching. For each such researching, Ecology science try to confirm the relations that exist in the concrete -- *individual object* of scientific observation, and inclines to perceive guidelines and regularity of these relations, which appear within the specified objects of examination, just as well as the limits of effects that will not cause negative consequences to the observed part of *ecos*, and, therefore, on it completely. That is exactly how it has established the task, but also given the base of the law in its development and effect. It has done it,

[38] About this see Tatevosov, R.S. (1984), p. 37 -38.

[39] Any of the stated group objects can be further analyzed through its elements. For example: water, as water of rivers, water of lakes, underground water, and so on.

considering the ever-growing influence of man and the nature in interrelationship. The influence has been often presented as alarming, especially considering nature's incapability of fast and painless compensation for some aspects of the negative human influences. Therefore, the man as conscious social being must control mentioned influences, by his social organization; that is:

1. To realize them,

2. Correct them, or

3. Prevent them, if they can produce negative and unwanted effects.

For resolving of enumerated problems the main instrument is law, made for entire and conscious social organization. It means that we see law as the mean of regulation toward wanted behavior, but also as for preventing the unwanted.

1.5.2a. Logic of Law Access to The Environmental Protection Matter

Enormous development of the energetic capacities, multiplication of technology currents and the growing burden of the environment that comes out of that, has caused the inevitable respect to the truth, observed by science, that the whole human society, to which we can contribute, or do just the opposite, is in the mutual dependent totality with the environment. By our will we can contribute, or do wrong, to this totality. The task of the science is: To offer the full contribution, not only to development, but also to the knowledge which is necessary for consolidation and revitalization of the environment. Realization of this complex knowledge is not possible without the wider social acceptance, which furthermore asks for the suitable organization of the states, oriented towards this aim.

We have to be aware that human behavior guides conscious, and it does not always respect natural and social community rules and necessities. Consequently, every human community needs to establish the rules of conduct, so that the natural and social laws of development, which it feels as its own needs and necessities, would be respected as much as can be possible. In the other words, society has duty to parallel develop scientific and, on it based, practical approach to that task. Task, which final results must be showed as the establishment of complex of realistic -- applicable rules, that will arrange the wanted, and incriminate and sanction the unwanted, reference of the subjects of law to the *ecos*, as entity, as well as to any of its elements, with which is human society in an evident interaction. This way of the observation of problem demands two mutually connected levels of approach to the matter:

- Theoretical, and
- Rationally -- practical.

In the process of law developing, man has been, and still is, guided by the reality -- by needs that reality imposes. So, the man has, during the time, according to the growing necessities, developed different branches of law. With their genesis, and growth of their complexity, man has realized that all of them, although different between each other, have the same denominators, and that can be explained by some general statements and conclusions, wider than the knowledge connected to each of these branches separately. Law science has been developed. Development has caused human society to consider each of the relations with more explained elements, observed from different angles (forming Civil law, *Administrative law, et cetera*), thus with more quality. The reverse action has appeared between legislatures and law science. Development of law has begun on three levels:

- *General* – theoretically, and

- *Lawful* -- the level realized through legislations:
    - Observed as historically--legal, but also
    - Through positively -- legal aspect.

Third area of law, which makes that the law has not, in essence, a static creation, but possess dynamically nature, *is the area of wanted* -- the level that consider growing needs of society. This area is the most directly connected to the necessities of society as the entity, necessities arising from its development -- both through individual elements' development and through development of society in a whole. This area we shall observe not only at the concrete example of Serbian society and state but a number of other modern states also.

Approaching, in actual moment, to the problem of protection and promotion of human attitude towards the elements of *ecos*, we think that this problem should be approached thoroughly, because we think that all the conditions have matured -- just as well as the strong need, and, according to our subject, on all of three levels:

1. General, theoretically -- legal,
2. The level of the realized law - built in positive legislature, and
3. Considering the wanted, the reality of the concrete – for example Serbian society and its position in the world's community.

Consideration the complex question of desired at the level of legal protection of the *ecos* takes us through three phases of thinking:

1. Noticing the legally existent, therefore possible for its systematization,
2. Forming methodological apparatus applicable to the task, and
3. Correctly considering questions and answers arisen from the previous phases, pointing the necessary steps considering the ecological protection.

For all that we must, even roughly, say something about the logic of mutual dependence in ecological relations, mutual relations that are, through years, more and more obvious. We also must notice the predomination of the anthropocentrically oriented logic of the *Ecology Law* formulation and development.

1.5.2b. Logic of the ecological Mutual Dependency

In the past few decades conscious of the science and the public about the mutual dependency between many elements of the environment is in a process of constant developing. Knowledge about the number of elements in the obvious mutual dependency is developing much and much more from day to day. For example, in this moment, it's clear that the cleanness and quality of the air directly depend on: Degree of pollution[40], quality and quantity of forests, currents of wind, both considered regionally and on the whole Planet. We are also becoming aware that simple reforestation is not the solution[41]. We are beginning to realize that the biological variety[42] and climate itself, globally[43], has the main importance "for the prosperity of the present and future generations[44]‘‘, together with

[40] From which reason had been formed and adopted, at the level of states, many international law texts, for example: The 1984 Geneva Protocol on Long-term Financing of the Cooperative Programme for Monitoring and Evaluation of the Long-range Transmission of Air Pollutants in Europe (EMEP), The 1985 Protocol on the Reduction of Sulphur Emissions or their Transboundary Fluxes by at least 30 per cent, The 1988 Protocol concerning the Control of Nitrogen Oxides or their Transboundary Fluxes, The 1994 Protocol on Further Reduction of Sulphur Emissions, The 1998 Aarhus Protocol on Heavy Metals, and The 1991 Protocol concerning the Control of Emissions of Volatile Organic Compounds or their Transboundary Fluxes.

[41] As can be seen through the text of the Convention to Combat Desertification in those Countries Experiencing Serious Drought and/or Desertification, particularly in Africa.

[42] Convention on Biological Diversity, Preamble, *et cetera*.

[43] See: Article 2 of the Climate Change Convention in: Napori UN za bolju životnu sredinu.

[44] Climate Change Convention, Article 3, Principles, Act number 1.

the applicability[45], or inapplicability, of certain technologies[46] and usage of sources. Therefore, the international public is making the clear statement, by the Principle 7 of the "Rio Declaration'', where it is said that the states cooperate in the purpose of preservation, protection and restoration of health and unity of the Earth ecosystem. Which means the entire *oicos* as the complex and mutually dependent entity, so that in the purpose of realization of the sustainable development, protection of environment represents the integral part of developing process, and cannot be considered separately from developing process itself[47].

1.5.3. Anthropocentric Logic of The Ecology Law Forming

One of the essential questions, among the lawyers -- theoreticians, question which has remained open until today, is: Is it the ecology right, the right of man, or of the *oicos* (or the *ecos*, if you want to use this word)? If it is the right of man, is it the right only of present generation? The previous standpoint follows from the nowadays accepted premise that man enjoys all his rights during his life as the living right holder (L. *titulus* - subject of law). Therefore, without life, he cannot enjoy his rights, either. It implies that the future generations, as an abstract notion, not the existing phenomenon, cannot have any right, including the rights from the *Ecology Law*. We consider this attitude as the wrong one. *Homo sapiens* is not only the sum of the living persons, but the specific *biological species*, which means that it includes not only living examples but future generations also, and has been protected for many years, for example, from genocide, which, by affecting the living, affects the still unborn members of human society. And talking about genocide, we

[45] Rio Declaration, Principle 9.
[46] Rio Declaration, Principle 8.
[47] Rio Declaration, Principle 4.

should mention that attacks at the men's environment could also perform it[48]. By its deterioration, depending on the amount and the way that we do, the population is affected, just as like as its unconceivable posterity. It is an obvious fact. Therefore, following this anthropocentric oriented trace, which has initiated the entire law and, of course, legislatures, we are actually talking about the right of both, present and future generations on the healthy environment. So, we are really talking about the right of *human species*.

It is far more difficult to stand up for the attitude that the right of the environment (ecology right) in fact belongs to the *ecos*, that is: To all of its elements. If it is so, who is the titular of rights? Is the *ecos* one physical, or artificial, person, with subjectivity and personality, and, consequently, can be titular of any right, duty, or obligation? If it is so, who does really have the right to decide? Can the *ecos* be legal subject, with analogy to the artificial person, when it is obvious that the *ecos* is constituted by the living and non-living natural elements? For the present – positive law, non-living elements are things, and, under any condition, cannot be considered as the subject of law, or as its constitutive elements. It implies that only the living elements of *ecos* can be subjects of law. Is it so? Today's science and legislatures have extremely predominating attitude that living natural elements are not the subjects of law, but things. Even, though a lot of contemporary legislatures, when it comes to animals' killing (wild, or those assigned to food) forbid to torture them. Frankly speaking, there is long term present attitude of the German lawyer Bosselmann that we should admit subjectivity to the nature too, as the entity[49]. The base of his approach is the "Law on the Protection of the Animals'', of Germany, from the year 1972, which, with the Article 1,

[48] See: Convention on the Prevention and Punishment of the Crime of Genocide, Article 2 under (c).
[49] Bosselmann, K. p 3.

has established "ethical protection of the animals''. Bosselmann this formulation sees as establishing of the legal subjectivity of the animals in general. This means: To the part of nature (L. *Natura*) that is: Alive. Consequently, he thinks, it is logical that *Natura*, in totality, has the legal subjectivity. He forgets basic fact: That *etos*[50] is not the product of nature, as totality, but the product of mind, therefore of man, thus that ethical protection of animals means, simply, protection in accordance with criterion made by man, not the legal subjectivity giving. Later development of law science has not proved Bosselmann's attitude. Our opinion is, as the opinion of many lawyers, that the Article 1, from mentioned German law, does not give basics for the legal subjectivity of nature establishing. Furthermore, it is far less logical that not alive parts of the *ecos* (nature in totality) automatically deserve legal subjectivity, if alive ever get it. This access is, we think, really bad scholasticism.

Observing the *ecos* as totality, we comprehend complexity of relations between its elements, but, at the science level of nowadays, we cannot see *ecos* as the meaningful being -- subject that has will and, consequently, basic logical element for legal subjectivity. Of course, this is not obstacle for the protection of the entire environment. Protecting *ecos*' elements we limit many of the men's rights (for example: right to built), but we also channel them. Thus, if we are talking about the right to build, we do not prohibit it generally, quite contrary, we regulate:

- Where someone can build?
- Where is building prohibited?
- What can be built?
- Under which propositions someone can build?

[50] Old Greek word, base for L. *etica* – ethics.

and so fare. With such action, protecting the environment -- its elements, we make environment useful for future generations[51]. We do this because it is obvious that any influence at the environment has, in return, the influence at the man[52]. From this broader point of view, those limits, established by the *Ecology Law* norms, expressed themselves as the norms that protect rights of present and future generations on healthy nature and adequate resources. If it is from this corner seen, *Ecology Law* is expressed as the law that threats right of man, but man as the biological species! At this moment and level of scientific knowledge's, we think that the *Ecology Law* has to be observed clearly anthropocentric. Strong confirmation to this access give Principle 1 of the "Rio Declaration'', in which has been pointed out that human beings have central place in the care for sustainable development. Also, that man have to cooperate, in reducing differences of the living standards, as well as the better satisfying of major world population necessities[53].

1.6. Defining of the Elements Necessary for the Existence of the Ecology Law

1.6.1. Subject of the Ecology Law Protection

Every human society, using its natural resources, transforming nature for its development, has noticed, through long time periods, that in these processes, certain rules of nature must be respected, and, because of them, sometimes, more precise social rules of human conduct have to be established, so that these processes could happen undisturbed. In such, long time present, situation, lawyers started thinking that processes like:

[51] Rio Declaration, Principle 3.
[52] As had been understood, by Bosselman, p 4.
[53] Rio Declaration, Principle 5.

Production of energy[54], use of waters and water currents[55], relationship towards forests and soil, must be precisely regulated. Not only regulated in a way that each of them will occur in the best way for itself, but also that such processes and relationships do not disturb each other.

Through the time has been crystallized knowledge that this would be accomplished in the best way if each of mentioned processes will function with the least negative influence on its surrounding. This mean: If it is possible, to function at such a way that protects and develops the environment. From this reason social groups have to normatively regulate different fields of life: Food producing, producing of energy, traffic, as well as energy transport, constructing, using of waters and their treatments, *et cetera*. To regulate them by norms that will be pointed, at the same time, or only, on development, or on the protection of the *ecos*' elements. In the approximately 25 to 35 years ago, sovereign states have brought to life majority of such rules, now in effect within their legal systems (laws, acts, sub-laws, standards in function of so-called legal supplements, *et cetera*.), but, starting from the obvious necessities, they have also engaged themselves in successful international cooperation, mutually formulating answers on many joint, ecologically oriented, questions, expressed at the international level. A lot of international conventions, which deal with the problem, have been brought. That's the reason and the way on which various intellectual forces have started dealing with the questions of protection and development of *ecos*, at first with those connected with the international field of cooperation[56]. At the beginning, those norms from the autochthonous legal systems, as well as from the international law, just were some kind of additions to legal entirety -- entirety that has not had, as the basically object and aim,

[54] Popovic, S. (1990), pp 177-185.
[55] Theme threatened, in detail, by Dose, U. (1972).
[56] At the beginning of the seventies, in Yugoslavia, discuss Cigoj, p. 39, and Peleš.

protection of the eco-systems, but regulation of: Traffic, energy producing, and so forth. It means that all those rules basically (and at first place) solve some other, but not purely ecological problems. Solving them, they, at the same time, gave a small, but important, ecological contribution, from their aspects. At first, such norms had been only partially adapted to the protection of some elements of the environment, not completely adapted, or strictly formed for environmental elements' protection. As the norms of: *Administrative Law*, *Hunting Law*, *Public Law*, *Traffic Law*, *Law of Building*, *Public International Law*, *Maritime Law*, *Criminal Law*... all of them, we shall say, have been *ecologized*. This means that with their logical beings such, *ecologized*, norms, at first, treat some other, not the ecological objects and problems. By treating their primarily matter, all those norms also and parallel give ecological contribution. At such a way process of such legal constructions forming open way for the formulating of purely *Ecology Law* norms.

Looking at the relations between men and the natural surroundings, all positive-law systems, for the last four or five decades, have realized that for the regulation of such relationships, we need more than *ecologized* – partially ecologically adapted and applied rules. This insufficiency exists for two reasons:

- First is the narrow connection to the subject matter of the belonging law branch.
- The second is the uncovering of various ecology relations, or their unsatisfactory law covering, at the state law level, or at the international law level.

That is why a process of setting purely ecologically oriented rules has started, covering, as the basic and main subject matter, one of the areas, or elements, of the environmental protection. For example: Protection of air, protection of water, and protection of the biological elements of the environment. Every one of these objects has been treated with the

common goal, regulation of the adequate relation with: Elements of natural surroundings, quality of life, and preservation of human health[57]. Produced from the reason of necessity, those regulations have been, and are, in process of developing, parallel at the national and international law levels. At this second, higher level, we can say, at a far higher level that in many sovereign states. For example, in Yugoslavia, whose successor Serbia is, this process had been obviously connected with the development of the International Law, especially from the year 1973[58]. At the International Law level the main postulate for regulation of the ecological relations, from the year 1984th, has been based on the principle *Sic utere tuo ut alienum non laedas* (Use your property in a way that you do not violate your neighbor[59]), which has been stated in Article 194 of the United Nations Convention on the Law of the Sea (December, 10, 1982)[60].

Creating and realizing various activities, through them influence on the surroundings, men, in essence, enter into relationship with the values of surroundings. From those reason of reality and necessity we are creating legal norms to regulate all parts of constantly developing ecological relationships, of course important for human surrounding also, and, consequently, for whole human society, at the best way. We can say that organized human societies, through the time, do this more and more. This process is obvious practically in any sovereign states. From this reason we can say that positive *Ecology Law* exists, but not yet as really completed and finally systematized scientific entity, nor as the legal, which means legislative entirety. It exists on two levels:

1. As a growing part of the International law, and as

[57] Lamarck, J.B. (1977), pp 772-789.
[58] About this see more at Joldzic, V. and Milicevic, G. (1995a), pp 8-9 and 17-25.
[59] Principle well known from the time of the Roman Empire.
[60] See page 7 of the United Nations Convention on the Law of the Sea.

2. The part of positive legislations of states, also the State where the author of this text live.

Although, in any document that treats some of the ecological relations, this has not been said explicitly, with the careful analyzes of problems, it is easy to see that the principle: *Sic utere tuo ut alienum non laedas* had been a part of the positive-law systems of many states long before the United Nations Convention on the Law of the Sea has emphasized this principle[61].

1.6.2. Aims of the Ecology Law Development

Mentioning anthropocentrically oriented nature of *Ecology Law* – part of law that protect the environment for present and future human generations, its perception as integral part of law science in general, which deserves, at the same time, educational and scientific approach, we have stated that the aim that we have set to ourselves, on the base of perception of the *Ecology* (*Environmental*) *law* real position in the process of its incarnation (not only at the territories of *ex* Yugoslavia, now sovereign states), is:

1. To make an parallel, but suitable, legally-political view on its future treatment as a part of positive legislation (which means in Serbia also), with
2. Simultaneous approach to the multi-disciplinary subject of this law science branch.

We think that this is necessity, and that all conditions for such process have been matured.

When we speak on legal politic and its views on certain complementary parts of entire totality of actual law rules, we must have in

[61] Compare, for example, legislations of the USA, Canada, Australia, France, Germany, legislative system of *ex* state Yugoslavia and many other states.

mind its simultaneous dual nature. Its aim, actually reason for its existence, is, according to Lopez Rey: "Reaction against denial of social values[62]''. Therefore, the aim of law policy is to organize state on the legally efficient way. To be really effective, law policy must have certain fund of knowledge about the elements that make the existing entirety of legal relations:

- Between precisely defined subjects,
- At accurately allocated territories,
- And in explicitly defined time[63],

relations that need adequately formed regulating policy, as well as threatening in reality. In case of ecologically-legal relations, then this legal picture has to be, at the same time, supplemented by the knowledge about the norms that arrange it on national and international level, just as well as by elements of knowledge about the logic of their further development. The only way of accomplishing this is by exploring the object of ecological relations in global, which means: All of those relations that are, by their nature, ecological relations, at the same time defined not only and preferably by the *Ecology Law* but also by the norms of *Administrative Law*, *International Law*, *Criminal Law* and the other law science and legislature branches, as well as by the other humanitarian and natural science branches connected with the ecological problems. To achieve our explained goal, to form adequate picture of the *Ecology Law* as science and legal, which means practical, discipline we have duty to form adequate methodological apparatus adjusted for this complex function. From this reason next step in our text is pointed precisely at the

[62] Paraphrased Lopez-Rey, Y. A. M. (1966).

[63] Minimal needed condition for such explicit defining of time, in any law policy text – not only environmental-law policy text, is to specify start time in general, or for its fundamental parts. It is not needed to precise final threatening time for observed law policy problem.

apparatus of the methodology which we have adapted to the *Ecology Law* researching, understanding and applying, one number of such elements that we consider as needed and enough for such methodological apparatus forming and using.

1.7. Methods Necessary for Complete Perceiving of the Ecology Law Relation as the Subject Matter of the Scientific Researching and Practical Treatment

1.7.1. Adopted Principles of the Methodology Access

What will be revealed in some concrete scientific researching depends, after all, on choosing adequate methods for researching. Methods, beginning with those for collecting facts, to one or more method(s) for making conclusions, have to be optimally adjusted to the subject of accurately defined scientific effort and aim - aim which is precisely defined. From all such reasons, which can be considered as principles for entrance in scientific researching, entering into parallel and mutually connected process of formulating and developing the *Ecology Law*, as, at the same time, scientific and legal, which means practical, discipline, we have to be conscious about the fact that realizing of this aim insists upon building of special, at the same time integral, methodological instrumentarium, adjusted to the subject of our researching: *Ecology Law*. Allow us to explain this process.

Observing, individually, norms that are aimed to regulate various relations of ecological importance, for each of them we will notice characteristics that separate them from the other such law constructions. By researching its larger quantity, we can notice certain moments, which are in common for the most, or even all, ecologically oriented norms, even if we observe heterogeneous law creations. Similarly, our view is changing even if we narrow, or widen, the time, or the place, of

observing. Certain characteristics, seen in first dash, seem important, but when the studying procedure is changed, the stress is on the other ones. All those moments cannot be noticed while we are observing and studding rules individually, certainly even when there is immense number of them, so they have to be studied as a sum, surely, not as simple algebraically formed sum, but, as a new phenomenon of higher string. It has its certain characteristics and law significance.

Fundamental aim of *Ecology Law*, as a branch of law science, is to reveal:

- All its confirmed constitutive elements, as one whole object,
- General logic of its structuring, and
- The way of the researched phenomenon development.

To achieve mentioned task for the purpose of more effective results at the field of numerous elements protection (one by one), as well as the entity of *ecos*, this process of studying must be continuous, having in mind that socio-economic, political, technological and the other changes, which time brings, demands constant checking of formed scientific knowledge and, on such base, continuous improvement of the *International Law* rules, as well as the sovereign states' legislatures[64].

In scientific process of researching, the *Ecology Law*, topic of our contemplation, has been understood as the entity composed by two complex elements:

1. Law-Theoretical acknowledgements of the environmental problems, and

[64] To be precise, not only legal constructions (laws) but also sub-law constructions.

2. Practical law-regulated relation toward eco-system, especially its elements present at the levels of national states[65].

This means that our object of study is, coincidently, complex, but also poly-semantic process, situated in concrete time continuum.

This also means that the object of our researching is, at the same time:

- Complex phenomenon whose constituent parts, but also one of the conditions of determination and living, are ideal (logical) creations: legal norms, and
- By the achievement of previously stated condition (formulating ecologically oriented norms), automatic realization of its essence, in specifically observed time and space, which means: Establishing of their material beings through the processes of positive legislature norms applying.

Therefore, it is apparent that the point of our scientific work is placed on the object of researching, which is at the same time:

- Of the ideal, and
- Material nature, and
- Has its time course.

This means that it can and has to be studied and reformed in dialectical frame, also on the basis of historical and materialistic methods, as fundamental theoretical and methodological approach, which frame has its specific place and significance for methods of the law sciences. Reason for this is placed in strong need for answering on the numerous questions, emerged from subject itself, which are, before all, law questions. Necessity of using specific methods during this process, such as: formally-logic and dogmatic "do not incapacitate dialectical

[65] Not only at the level of the Republic of Serbia State where the author belongs.

comprehension of law, or the use of dialectical method. Quite contrary, dialectic demands application of those (specific, comm. Joldzic V.) methods for learning[66]" the observed phenomenon. When it comes to the subject matter of our contemplation, it has to be observed by these methods in concrete time-place, for establishing its essence in this moment, that is, each of them, because only by using this, can be perceived as a developing and dialectical stature as well. Therefore is logical to speculate law methods firstly, and after that to use methods of social sciences, as the more general ones, by which the methodological access in studying the object, in favor for whose developing we speak about, open and close. We have to se and accept that, by offering preference to the methods of law in its access to the ecological problem, as a group of relations and circumstances based on, and emerged from, processes conceived on natural lawfulness, our law and legal way of thinking has to be based on knowledge from the other sciences, such as: Biochemistry, medicine, geology, hydrology, genetics... Only by adopting their results law can come to meritorious studding of the subject and to adequate conclusions at the field of the *Ecology Law*.

1.7.2. Methods of Law Sciences

Though law-ecological relation, in its totality, is determined by law as a dogmatic stature this doesn't means that law, though by definition regulator and protector of *existing* and not of *developing*, doesn't succumb to dialectical logic. Quite contrary. The most explicate examples are penal reactions aimed at ecological offenses[67]. Reaction that was undergoing normative changes inside any society, in:

- Basic, as well as in,

[66] Lukic, R. (1977), p. 19.
[67] Offences, Latin: *Delictum.*

- Subordinating criminal legislatures,

parallel with the appearance and developing of certain problems, which were expressing their ecological, or primary ecological nature[68]. Those changes emerge from law knowledge developing[69], as well as from influence of obligations taken from ratifications of international conventions. Having those facts in mind, it must be admitted their developing nature:

- Normative-developing, as well as,
- In the field of realistic application of positive rules aimed on protection of ecological values.

All these orient us toward consideration of the types of normative methods:

- Law normative,
- Logic normative,
- Formally normative, and
- Materially normative.

Each of mentioned methods, because of their specificity, is suitable to the subject of contemplation: Necessity and possibility of studying and developing of ecological values complete law protection.

Leaning on *law normative method*, we are doing this by starting from the sense that law perceiving of ecological relation,

- in inside (national) law, as well as
- in *International Law*,

[68] This has to be clearly distinct.

[69] Helped by knowledge of many sciences, for example: Medicine, Hydrology, Toxicology, nearly 70 of them.

is not structurally complete, nor clearly define the hierarchy of norms, no matter are we talking about national or international law. Therefore, *law normative method* turns out to be necessity, just to perceive the formal side of large number of norms that concern the matter of the ecological relations, well: Their legal force and mutual hierarchical relations. Without *law normative method* it would be impossible, and posted aim would not be realized.

Logic-normative method is composed for application of adequate logic rules on law norms as individual products, but also on law as a system, where all the norms belong. Through process of *logic normative method* applying we have to comprehend logic nature of norms that we are observing, this means: To comprehend sensible connections between existing parts of legal systems, their unity, completeness and coherence. Having in mind that ecological relation concern values, and relations connected to values, which are matters inside many states, their legal systems, where all those values represent constituent elements of legislations, but elements diffused in many branches of positive legislations, by hasty analysis is clear that until today there is no formed, in law science, one complete and systematized view on these legal properties and their systematic juristic treatment. This is the reason of using *logic-normative method*. Without it, it would not be possible to perceive complete ecology-law relation as a social, from this reason: International, by positive law defined phenomenon.

Formally normative method is necessary to contribute adequate law power of acts that are used for making norms, which regulate elements of ecological relation, or, if we look from another angle, to perceive are they texts of the:

1. International Law, or
2. Positive legislatures of states?

So, in this other case, to which class they belong:

- Statutory (or to say at another way: legal), or
- Under statutory (sub-legal, or at another way said: sub-law) texts?

We also have to know is the observed legislature of environmental importance product of the: 1. Unitary, or 2. Complex (federal or con-federal) state.

When the point is, for example, on state in long and complex process of transition[70], which problem is present with the Republic of Serbia State also, basic question is: From which level were brought observed norms: 1. Native Republic, or 2. Ex-federal (in our example: Yugoslav) level?

Also, what is the power of the observed rules itself? When we take a look on a number of such mutually connected norms, what kind of its reciprocally established hierarchy is present too, on each of these levels, as well as in general? Answering those questions we are getting foundation for application of *materially-normative method*.

Basic task of *materially-normative method* is settling of law rules regard to its contents, in other words, creation of the law system. Namely, with this method all rules, which regulate the same kind of law relations we can systematic together, in one group, and all such groups arrange in one (greater) logical entity, by order, determined with contents of mentioned groups. This enables norms' clearness and establishes their mutual connections. It means: Easier and effective use. This is more than desirable. To regret, when the topic is on our subject, as an object of regulative[71] and therefore penal rules[72], we can freely say that the *Ecology*

[70] For example, states originated from ex state Czechoslovakia, SSSR, Yugoslavia, *et cetera*.
[71] Using word "regulative" we want to embrace only norms that define rights and duties, and arrange legal states and relations of importance for the subjects of a law.

Law is not jet present as the system, established by *materially-normative method* using, as the system which is obvious part of law science, or legislations, of any state. But, we can say, with just the same freedom, that such system is in process of defining and developing, which means that can be done. Materiel for such effort is obviously present at many places, in form of rules, which concerned the subject matter, in sea of statutory and under statutory law acts, brought on every level. And the task of law science "is to arrange...numerous and in many ways contradictory regulations (comm. J.V.), to make of it a logical… un-contradictory whole - system[73]'', which will live in full rate. Basic step in this direction is to make the picture of really existing in law.

1.7.3. Methods of Social Sciences

By accepting operational definition of the *Ecology Law*, by which it contains:

- All present aspects of national legislatures of importance for our matter, and
- Adopted rules of relations regulated by *International law*, made in connection with eco-system,

It is clear that we have to observe these relations individually and at the same time as one group. This leads us toward using not only law science knowledge and methods but logical methods of social sciences also.

Since available matter can enable wide insight in subject itself, its constituent parts and entity, it is understandable that it is suitable for

[72] As have been said by Binding, if you want to incriminate and punish for something, you must have strong legal reason for this steps: Being of the law values and their legal treatment. The same attitude can be seen in Vouin, R. and Léauté, J. (1956) Droit pénal et criminology (Criminal Law and Criminology).
[73] Lukic, R. (1977), p. 141.

analytic elaboration. While doing this, it is desirable to observe larger parts of law relation stature, at the same time parts that had been formed, as well as parts in process of developing, from the simple reason of qualitative developing of protection - protection of the elements, but also the protection of the ecosystem as entity. It simply means that we have duty to perceive not only observed elements of the eco-system, but to perceive this system in general. This kind of methodological approach demand inevitable using of *inductive method*.

For us the *inductive method* is of major importance. "Cognitive role... is not just descriptive, but explicative[74]" also. Description, especially quantitative one, cannot be strictly separated from explication, which, in our case, means: Description cannot be strictly separated from explaining the essence of what makes aspects of law regulation of relations, whose general topic is *ecos*, what's more: The right of man on the adequate environment, which above all means healthy environment!

On the other side, it is possible to observe developing of the *Ecology Law* relation and to bring along connections with certain elements of its structure and the other facts. That considers *deductive way* (method) of studying and bringing conclusions. Though, *inductive* and *deductive methods* are basic methods of social sciences, suitable to our object and work aim: *Ecology Law* and its development, they are not, and cannot be, the only ones.

For reason of proper knowledge of our subject -- *Ecology Law*, it is necessary to come into perceiving of smaller number of examples of practical expressions of *Ecology Law* relation[75]. Adequate method for this is "*analytical* and *inductive* - for starting from concrete cases. Only

[74] Šešić, B. (1974), p. 109.
[75] So cold "Case Study."

proper knowledge of processes permits talking about it[76]‘‘. Exactly this methodological approach in studying of subject, such as our subject is, can give scientifically valid results.

In our own work at the Serbian environmental legislature as well as at the *Ecology Law* science, we accept all the methodological rules we just discussed, using at the same time, in our researching, the elements of many states’ legislatures, but, also, the International law elements, threatening them as the needed and useful for really qualitative scientific work. Of course, doing that, we also consider relations between *Ecology Law* and the other branches of law and legislature of importance for valid protection of *ecos*[77].

If we want to pass adequate developmental pat toward defined goal of the *Ecological law* forming and developing we think that is also necessary to express some personal reflections about the logical way of the law-philosophical thinking of significance for such developing path perceiving. Speaking about the *Ecology Law* as logical, scientific but also practical discipline in constant development, we think that is necessary to explain complex process of *ideas* of importance for the *Ecology Law* forming, developing and applying, transforming of *ideas* into defined *ideals*, then into *principles* and finally applicable law-logical products: *norms*.

[76] Gilli, Gian Antonio (1971, 1974).

[77] Of course, relations between Ecology Law and the other branches of law and legislature of importance for valid protection of *ecos* will be material for our other scientific text.

CHAPTER 2

SIGNIFICANCE OF DEVELOPING PATH FROM IDEAS ACROSS IDEALS TO PRINCIPLES AND NORMS FOR THE ECOLOGY LAW ESTABLISHING AND DEVELOPING

2.1. Instead of Introduction - Significance of Developing Path from Ideas across Ideals to Principles and Norms for the Ecology Law Establishing and Developing

Having in mind the idea about possibility that the *Ecology Law* has to be established and observed as independent law science discipline, with the:

1. General subject of the Ecology Law,
2. General aim,
3. Specific Methodological apparatus,
4. Connections with some other branches of Law science,
5. Possibilities for work on the Ecology Law Systematic, and

6. Reflections on the inherent principles of observed branch in developing,

We think that is also necessary to express, at the beginning of this book, some personal reflections about the logical way of the law-philosophical thinking of significance to perceive developing path from: *ideas* across *ideals* to *principles* and finally *norms*. This observation had been performed with the aim to depict that every norms forming, in the framework of any law discipline, if we want to make them with the adequate quality, have to get through four phases of developing modalities.

At utmost start we have to form clear idea(s) oriented at the base of philosophical thinking and our law science discipline, of course respecting knowledge of the complete law science. In the second phase of their development *ideas* have to be transformed into specific *ideals* toward we aspire, at such a way gradually manifest itself not only as *law science ideals* but also as *specific political goals*, which is third phase of thinking and developing, enabling at such a way that in the fourth phase, on the base of political, democratic, life, with the participation of the law science experts, previously formed *ideas*, *ideals* and *principles* can be transformed into precise and *applicable norms*. What is said is valid for every modern democratic society and state and every discipline of law science and legislature, hence the *Ecology* (*Environmental*) *Law* establishing and developing.

Entering into the area and possibilities of researching, forming and development of the:

1. Environmental Law generally, and
2. Environmental Penal, especially Environmental Criminal Law as specific guaranties for the ecologically oriented and regulated,

we, at the start, set up principal questions without which is not possible to achieve the results of our researching. First between logical questions are:

- How,
- By what means, or ways, or
- Through which phase(s)
- reach all those results?

Such thinking initially focused our attention, even laconically, at the explaining of developmental path that leads:

1. From *idea*,
2. Across *ideal*(s),
3. Toward *principles*, and, finally
4. Towards *norms*,

that are the basic preconditions for the formation and functioning of the state that is characterized by *the rule of law*.

Of course, if we want to engage in a qualitative clarifying of the logical development path we are obliged in the first place to fully honor some of:

- Legally-methodological[78], as well as
- Philosophical legal requirements,
- in full compliance with the chronology, necessary for the desired logical analysis and conclusions' forming.

We also have to emphasize that although in our research we deal with the issue of the *Ecological Law* generally, as well as with the part of its mosaic: *Penal Law guaranties* of ecological values, rights, obligations and duties, presented conclusions are fully applicable to any discipline of law sciences.

[78] About necessary law - methodological l elements se more at the Joldzic (1995a), pp 29-30, and Joldzic (2009a), pp 156-159.

The area of *Ecology Law*, we have to point especially, also have to be constantly developed at such a way to guaranty right of man, present and future generations, on the healthy environment, from this reason also to guaranty sustainable development of society and its economy. Exactly these requirements are basic necessary routers for the *Ecology Law* establishing and development, as the scientific and at the same time legislative discipline, as for the other law disciplines also, for modern state functioning. Hence, our, and not only our, efforts are layered, and:

1. Represent the entrance to the not-so-developed area of legal doctrine, not only at the level of the Republic of Serbia, but globally.
2. The reader should not to deceive by the bulkiness of some environmentally oriented law texts, no matter which are dimensions of their citing, from the simple reason of their really narrow, sub-special, thematic orientations.
3. Creation at which we pay attention (legally oriented state) is a complex phenomenon, for which above mentioned works only allow the forming and introduction of some smaller logic elements of importance for really complex mosaic of *Ecology Law*, which means *its logical being*.
4. All this requires a number of prior knowledge, not just from one or a couple of scientific fields but from a large number of them, and not only knowledge of legal but also many others sciences (from philosophy through logic to economy, sociology, as well as many others humanistic and natural disciplines) knowledge which is logically explained by a number of related scientific works and textbooks, books that are usually available to readers only at the levels of essentially and mutually different studies.

5. All previously pointed is primary reason why the author of this work believes that are necessary laconic explanations about the ways of: idea, ideals, principles and norms forming.

2.2. Logical Connections between Ideas, Ideals, Principles and Norms

About the logical interconnection between ideas, ideals, principles and norms long ago had been discussed by ancient Greek philosophers, but, perhaps, the most summarized and to actual time acceptable explanation of this developmental path and mutual interconnections had formulated German philosopher Schopenhauer, in his book The World as Will and Idea[79], its paragraph 3[80], where Schopenhauer clearly had explained that we have to distinguish:

- The ideas of perception (reality) and
- Abstract ideas, which really should be seen as concepts associated with something covered by our attention and study.

Schopenhauer had pointed at the fact that all present in the space and time can be observed and perceived on two ways:

- Directly, and
- Abstractly,

with full respect of the *principle of sufficient reason* on the basis of which man directs his awareness to understand the experiences, starting from *causes* and *motives*, hence *the law of reasoning*. According to Schopenhauer *idea* appears in special forms, starting from *intuition* as a

[79] Arthur Schopenhauer (1818).
[80] Arthur Schopenhauer (Translation 2011).

special kind of idea aimed at the conclusions about something observed as *real* or *abstract*.

When we use this logical path in observing some or all the social phenomena and trends, it is clear that we can then look at the developmental path which start with *ideas*, then form *ideals*, after that *principles* and finally *norms*. This is truth and of importance every time when you turn your attention at the group elements which are necessary and sufficient for the establishment and functioning of the Rule of Law, this means the *Ecology Law* as science discipline and a part of legislature also. For example at the field of *sustainable development* regulating, to which we also have directed attention through the *Ecology Law* researching. For example, when we focus our attention at the elements necessary for sustainable development we point them as separate although complex subjects of study, which also and at the same time means as a social goal (Schopenhauer's *sufficient reason*), condition for the existence of human community that provides the best possible for the survival of its members[81]. Hence we present developmental path of the sustainable development as the adequate example by which can be explained *material* and *logical base* for developing way from *ideas*, across *ideals*, towards *principles* and finally *norm*s. Let us to explain.

Sustainable development is *ideal creation*, toward whose achievement aspire communities and at the same time preconceived *aim* that have to be realized, the *goal* not only for actual but for future human generations also, essentially the goal for *society-state*! In the realization of sustainable development, at the precisely determinate area and through defined time, we encounter a variety of challenges as well as their different dimensions. This is why sustainable development can be seen as hypothetical *ideal*. Although sustainable development can never fully be reached (realized)

[81] See more at Goldsmith, E. et al (1972), pp 1-22, and Goldsmith E. et all (1997), pp 199-210.

as an *idea* and an *ideal creation*, if nothing else because of the constant emergence of new challenges (problems) that need to be addressed, it deserves continuous social meaning and state involvement. It is understandable that only at such a way is possible survival and progress (sustainable development), hawing in mind ever present problems of demographic, economic and technological relations and progress.

In order to transform sustainable development from an *idea* (ideal creations) and *ideals* in the real achievement as our goal:

- At the first place have to be formed necessary instruments, which means the rules of: economics, law, and the other social sciences and professions, in other words norms which regulate them, and,
- Secondly, that is "through the second phase", to apply such rules, but also and
- At the same time to ensure adequate guaranties for their respecting, for which are needed:
    - Adequate apparatuses at all levels of state administration, but also
    - Essential Penal Law elements as a separate and final type of guaranties.

Without previously explained, sustainable development, as the *ideal*, possesses no chance to come to life (reality). Reason is simple. What is said, although needed and adequate for any state inside national borders, is not enough to be done by states individually but have to be properly done at higher and wider level, which means through the cooperation of states[82].

[82] About this see detailed explanation at the Joldzic (2008b).

In order to realize précised goals, including sustainable development, we must possess clearly formulated and applicable *principles*. But, what are *principles*? In a nutshell principles can be seen as a link between:

- The *idea* and *duties*,
- *Morality* and *aspirations*,
- *Morality* and *duty*, and
- *Values* and *rules*[83].

Principles do not oblige as *norms* do, but establish:

- Rules, *moral mints* (duties) and
- Bases for *legal rules* forming, which means rules that concretize them at the levels of *International Law* as well as of national legislatures,
- strongly affecting at their forming.

In essence, principles are visible in precisely formed groups of rules, especially laws, as well as at the level of International Law texts that can be observed as legislative[84], at first place conventions. They precise general aim(s) and object(s) at which some collections of legal rules are oriented and applied as well to what observed principle(s) aspire. Hence process of principles forming is the first step of ideas and ideals converting into something concrete.

If, for example, we consider sustainable development as a field of our scientific interest, it is clear that the principles can contribute to the legal rules formulating, rules of direct as well as of indirect importance and impacts on the some action that can provide a positive contribution, but

[83] Mac Cormick, J. (1974), p. 127.
[84] Legislative, which means formed as legal acts and with the same binding function of prescribing to do or not to do something, acts that states by the acts of ratifying formally include in their positive legislatures.

also to produce negative effects - violations of the human right to a healthy environment, the environment generally or at some of its elements.

Principles, generally speaking, have multiple roles, between them:

1. Can be used in the processes of new obliging legal texts forming, at the levels of international law as well as of national legislatures,
2. When we have need to form the official, understandable, respectful and obliging explanation(s) of something which is not satisfactory clear, for example of something from constitution, some legal act and, in a number of states, from decisions of supreme court(s),
3. *Principles* also acts as primary regulator of broadest meaning when we, as subjects of law, approach to some problem and have the necessity to regulate something within existing legal acts, for example:
   - At the sub-law level, by new and obliging sub-legal acts (categories of: sub-legal rules, standards, *et cetera*), and
   - By contracts.

Clearly, then, we need to respect not only the basic legal principles but also newly formed, such as, for example principles of *Ecology* (*Environmental*) *Law*[85].

Let's go back to the previous question: *What is, logically speaking, principle*? To the knowledge which we had already formed the necessary amendments in the best way provide British author Dworkin through his texts published more than 40 years ago[86]. Dworkin said clearly that

[85] About the Ecology Law principles see: Joldzic, V. (1999), pp 71-107 and Joldzic, V. (2007b), pp 85- 86.
[86] See more at Dworkin (1967), pp 14-46 and Dworkin (1977).

principle establishes *reason* that directs in a particular direction, but does not require a specific decision making[87], merely indicates the preferred path (direction). Hence the principle can be seen as a logical entity, a "moral of duty" part, although and at the same time it is much closer to the "moral of aspirations" as Dworkin had called it. This also means that principles are closer to "moral of duty" and "moral of aspirations" than norms of legal acts are, and, we would say, also closer to the "moral of rights and obligations" than to norms of legal acts.

In essence, Dworkin has formed a *logical distinction* between *legal principles* and *legal rules*. First of all, as Dworkin explained, *rules* are applicable at *individual cases* while *principles* provide *general direction to the decision*. But this distinction is not sharply set. In reality, principles and rules, in their formulations and meanings, ranging from fully abstract to more concrete. Also through the time *principles* can grow into *concretized rules*, but the main difference between them is in the facts that:

- *Principles* possess higher moral character, also
- *Principles* act as link between *ideals* and *legal rules*!

Starting from Dworkin's theoretical work, studying reality, many authors form a more detailed sets of distinctions necessary to differentiate number of functions that characterize principles. So Dutch lawyer Verschuuren points out, *inter alia*, that the principles:

- Strengthen the legal force of *basic rules of law* (such as the basic roles from constitutions are, or the other laws which are analogous to constitutions, their structures and roles), these legal texts often contain procedural provisions, such as laws primarily aimed at the protection of the environment,

[87] Dworkin (1967), p 26.

- Increase the level of legal certainty, if they are clearly respected in the processes of various decisions forming, of course at the levels of administration and jurisdiction,
- Form the basis needed for the construction of new legal rules, serving as the necessary routers for decision-makers, this means:
  - Legislators at the national levels, as well as, for example,
  - The level of the European Union, and we should add to this,
  - Legislative conventions and their accompanying texts (most of all *annexes*), starting from those of global importance to those of narrower spatial character (of continental, regional, and local importance) only[88].

As can be seen from the foregoing, *the principles* are essentially legal norms of broadest meaning and significance, that basically are not directly applicable[89], but by norms on them precisely based. Norms formed to treat precisely some certain but narrower defined subject, group or individual, which states do[90].

Question that also needs answer is: What are *the differences* between *legal rules* and *political views*, as well as *comprehensive policy*? This from the simple reason that to the formation, development and maintenance of *the legal state*, thus its sustainable development, can strive not only through theoretical knowledge and ways, but, above all, through direct and precise practical activities. This is only feasible

[88] See: Verchuuren (1995).
[89] When we say "in essence" by such linguistic structure we point at the role of constitutions, their principles of widest importance and meaning (not always abstract significance and meaning) that have to be respected through legal life which means at the constitutional courts also.
[90] Not only states but also international organizations such are The United Nation and the International Labor Organization, to note two of them.

through the establishment and entrenchment of necessary *political views*, then the *comprehensive policies* aimed at the legislature development.

In essence, before formal forming of any norm, especially of complex logical structure, it is necessary to treat open questions through clearly expressed democratic processes by which have to be formed *political attitudes*. This precisely means that such political attitudes are logical and chronological predecessors to the obliging legal texts, at first place laws, as well as norms that constitute them. This is their first mutual difference!

Second and simple difference between *legal rules* and *political attitudes* is expressed through the fact that rules can be applied directly, through the norms of simple or complex structures (this means simple or complex logical beings), while *political attitudes,* for example *environmental policy*, firstly have to be transformed into adequate legal and sub-legal acts as preconditions of their real applying.

Practical understanding of *differences between principles* and *policies* into practice is simple, feasible and logical, and easy to be explained laconically:

- Namely, when some *principle* is, in reality, bypassed without a valid reason, then the competent court has the basis to form adequate decision to treat this. *The policies* themselves do not have such legal weight and importance for decisions of courts. If it is violated some policy, such as environmental, no one court has the right to condemn it, but if the same non-compliance violates specific legal norm or norms, then just on the basis of precise and injured law, or elements of laws, the court is obligated to condemn the subject of unwanted and clearly expressed as illegal and punishable action!
- And secondly, what we always must have in mind, *policies* have a strong impact on the legal principles forming, but we also have to

respect *legal principles* in the processes of forming and implementing policies!

When we pay attention at principles next and specially expressed question is question of possibilities to perceive (recognize) the role of principles in the logical development path forming:

I - From *the ideal* to *the rules*, and

II - From *the ideal* to *the policy*.

For mentioned relationships and development paths understanding can serve simple examples. So, to make the *ideal* of sustainable development concretized, which means incorporated it into precisely defined legal act or acts, principles as is *Polluter Pays*, formed necessary connection between *ideals*, *legal rules* and *policies*. *Formulating*, as well as *the application of rules*, starting from *declaratively formulated – inside policies* but also *obliging rules* – located into legal acts, are under the influence of *legal principles*.

As we have been able to conclude from previous logical part of the text, *the ideal* of *the rule of law*, or only *sustainable development* as one of the preconditions of its existence, is largely abstract but of strong influence at forming for this necessary: *policy* and, above all and at the first place *principles*. And *principles* then are of influence at the formation of social rules:

- *Declarative*, within specific policies, but also
- *Obliging*, within *the legislative texts*, which means at the process of *binding legal norms forming*, in order to achieve desired by them.

All this also lead us to some more conclusions, between them:

1. That *the ideal* (at the same time *ethical principle*) of *the rule of law* and also of its *sustainable development*, is clearly anthropocentrically oriented goal. Anthropocentrically from the simple reason that this ideal

is formed for human beings for their well and good, as an obligation and responsibility for groups of human beings:

- Those in power *versus* all natural and legal persons under the jurisdiction of the State,
- Developed human societies *versus* developing ones, as well as
- Actual generations *versus* future human generations and their societies.

2. Also is required the application of appropriate stimulus for the continuous development of human societies, which means that is required constant rule of law developing, especially at the levels of the societies that are not in this sense adequately developed, or are really poorly developed.

At this point, when we talk about development, we also must warn that many authors overlook that development, development of the legal state also, does not automatically means development for all to the necessary standards. We remind that very often the mass of workers and peasants of the aforementioned development does not have any or adequate benefits. Examples for this are present also in the Europe of our time, although Europe is starting place of modern legal states where economic and technological development bring gigantic dimensions of goods and money, but also produce massive unemployment, especially of young people, even those highly educated, in a many of highly developed countries (Germany, France, Italy, Spain ...). Hence it is clear that not only to the author of this book but to wide number of intellectuals *the ideals* (desired goals) are: *legal state*, *rule of law* and *sustainable development* as phenomenon and processes in mutual connections, as well as by them achievable realization of *socially acceptable goals*.

All aforesaid at the almost abstract way cannot be achieved without the respecting and implementation of a set of *principles of various disciplines of law*. So, if we pay attention only at the examples of the *Ecology*

(*Environmental*) *Law*, this law science discipline possess almost thirty of special inherent principles, about which we already had wrote through years. But also, it should be borne in mind that the concretization of:

- social, then national and supranational orientation towards the achievement of socially desirable goals of justice and law, and
- socially acceptable sustainable development

must be done with full respect of requests and aims formed on the base of numerous *attitudes* and *principles of morality*. Of course, we should not overlook the fact that the Law, which means *Ecology* (*Environmental*) *Law* also, is not only an abstract entity, everywhere equal like algebra or geometry, but that many law, hence legal:

- Attitudes, also
- Values,
- Ideas,
- Conditions, and
- Criteria,

vary in space and time. Although in essence and principally the task of every society is "to form community at such a way to be sustainable and to offer the best for its members[91]", because for societies, without exception, one of the highest duties of morality is to preserve and enrich the social goods[92]. And this is not possible without adequate transforming: ideas into ideals, then principles, and, finally, principles into the necessary norms!

[91] Paraphrased from Goldsmith et al. (1972), pp 1 - 22.
[92] Fuller, L. L. (1965), p. 13.

2.3. Conclusions about the Significance of Developing Path from Ideas across Ideals to Principles and Norms

Introductory part of this study, that threats the importance of the development path from idea to ideals, then across ideals to principles and norms, we had formed with the idea and aim, hence the result: To point that any norms forming, no matter of what law science and branch discipline, if we want to be valid, have to pass a development path characterized by five stages:

- Starting from the formation of *the idea itself*, which also includes its review, then
- Transformation of the *idea* into *narrow focused* (specific) *ideals* towards whose realization we strive, primarily through the development of thinking about the needs of specific elements, elements needed for the applicable legislation forming, after that
- A sort of *legal ideas* logical distilling, then
- Distilling from them *legal ideals* and their transforming into *the principles* as a kind of landmarks towards we gravitate through law development, which process often includes an analysis of previously realized, also observing such elements as the foundation for further logical development of politically, hence legally which finally means legislatively desired, and
- The fifth phase, on the basis of political life to whom contributes the work of lawyers, their initial ideas emerging, growing of such ideas into clearly stated ideals and the principles but also the requests of law-political life, phase of *final transforming* in precisely formed and *applicable norms* of laws.

As can be concluded, we have formed this chapter of study, although laconically, having in mind the necessity to explain principal logical ways

that have to be respected through the work on development and the perception of *Ecology* (*Environmental*) *Law* as a scientific but also as practical branch, branch that posses mutual connections with the other law disciplines, as well as internal hierarchy and structure of this discipline.

CHAPTER 3

FROM RULES THAT MAKE ECOLOGY – LEGAL CONSTRUCTIONS TO THE POSSIBILITY OF ECOLOGY LAW SYSTEMATIC DEVELOPMENT

3.1. Rules that Make Ecology – Legal Constructions, their Locations and Being

Entering into process of researching, understanding and, finally, explaining rules of importance for *Ecology Law* and legislatures constructions, respecting logical developmental pat from ideas, then ideals, principles and norms of importance for the *Ecology Law* forming and developing, which also require forming and developing of the *Ecology Law System*, thus systematization of the *Ecology Law* as science discipline, it is of utmost importance to answer at next questions:

- By which rules,
- Which structures, and
- Locations (of those norms), as well as
- By which way,

we can make regulation of the attitudes towards those group objects we had partially pointed at previous pages, considering the fact that the norms actually are those essential constructive elements of the ecology -- legal constructions?

Law and legal systems don't know for the universal classification of norms, but separate them starting from different aspects - aspects which have been formed by law science theory. Regulations, including those related, or of importance, to ecology, can be categorized according to:

- Sort,
- Amount of importance,
- Time of validity, and
- Competence to pass them.

They can also be observed as:

- General regulations, located within so called *lex generalis*,
- Specific regulations – of the *lex specialis* category and
- Single regulations – known in the law theory as the *lex singulum* category.

Into *lex generalis*, when we are talking about ecology matter, can be classified general laws on the protection of nature, (or the environment as have been formulated by some parliaments[93].

Lex specialis includes those normative constructions that more thoroughly, with more details, deal with certain questions, generally treated by norms from some of the *lex generalis*. For example, such are laws that treat: National parks, waters, air, or the preservation of some natural resources.

[93] For example, such law is Environment Protection Act (1990) of Great Britain.

Within so-called complex states (federal and confederate), where, for example U.S.A, Germany, or Switzerland belongs, ecological rules can be classified according to the bearer:

First, as the rules of central authority (federal and confederate), and Second, republic, or cantonal (i.e. rules made by parts of the complex state).

Some of them can be native legislatures' product of central authority of certain state, or of its separate elements (if the state is complex), while others can be brought into the legislature through the process of ratifications, or the some of the other legal ways -- i.e.

- Through the affirmation of the acceptation, and by
- Taking documents of the International law within domestic positive legislature.

We should be aware of the fact that ecological rules, which serve to regulate relations toward any of group objects, previously mentioned, can be located within:

- Laws, and
- Within sub-legal acts just as well. In such a case they are additions to the clearly defined norms of precisely determined legal acts.

Rules of the law that need and have the additions are called *complex norms*, while sub-legal acts have function of their *addendum*-s. Or, to say with another word: Supplements. Supplements (sub-legal acts) without precise connections with above them hierarchically located and connected legal norms are useless. Complex legal norms are also useless without their supplements, located in sub-legal acts, acts which help us:

- to see complete picture of actually observed reality, and

- to form adequate legally based decision (for example, as inspectors, judges, *et cetera*).

Beside those norms of the complex law beings, there are also norms that have simple beings -- the logical entirety, and therefore do not require *addendum*s in any form, form of sub-legal acts or some of their norms also.

Starting from the Manaster's attitude that "everything that comes from the nature has to be respected and preserved[94]", we shall add: As well as environmental values produced through the human work, we can group ecological norms, also considering the effect, or effects, they possess, or produce, as:

- *Preventive*, which most of them are, but, also,
- *Norms* that have been used *for rehabilitation* of ecologically negative effects, and as
- *Disciplinary*, used to punish ecology offenses.

Ecological norms can also be classified, according to the sort of protection that they provide, as:

- *Medial* -- those norms that establish adequate protection for certain mediums from bad consequences,
- *Causal* -- norms that regulate protection from certain bad consequences, caused by different causes, such as: Noise, radiation, hazards, poisons, radioactive or other dangerous materials,
- *Integrative* -- norms that, with their positive construction, provide, at the same moment, the protection of a number of different objects (water, soil, environmental values made through the human work, *et cetera*).

[94] Manaster, K. (1977), p. 743.

Preventive norms prescribe desired sort of behavior -- behavior by whom will not be endangered, or violated, any ecological value or right.

Penal norms have been developed in order to protect ecological values and laws, by prevention, or by punishment, of the:

- Violations,
- Any risk, or
- Purposely produced danger.

Legislators in modern states incriminate and sanction activities opposite to the norms that regulate desired behavior, simultaneously taking in consideration the possible amount of danger, or violation, which can be produced for those ecological values that are legally defined and established.

3.2. Processes through Which the Ecology -- Legal Relation is Declared

Having in mind everything previously said about the *Ecology Law* logic and structure, its general object, as well as group objects of ecology-legal relations' regulation, just as well as about rules (norms) which thereto contribute to:

- Their structure,
- Mutual classification, and
- Differences between observed rules,

We think that contemporary law, both on the level of:

- Sovereign states' positive legislations, and
- The international law level,

For adequate treating of the general ecological relation, must be developed through three mutually connected processes.

(1.) Above all, states have obligation to arrange ecological relations. This, mostly, means: Building of regulative *Ecology Law* norms. At first place: Rules of *Administrative Law* specified for ecological problems. If we have wish to possess such norms, in any country, as a real mass of norms in real legal life, not only as a mass of frozen – abstract norms on paper, legal values treated by them must be completely protected. Protection cannot be offered only by administrative rules themselves.

(2.) Any part of legislation which regulates something needs specific kind of protection. Protection, at first place, means threatening of the unwanted behavior by sanction or sanctions. Sanctions have to be formulated and applied on the unwanted behavior that can endanger, or violate, any of value treated by "regulative" norms, which mean norms that prescribe wanted, from this reason liable ways of subjects' doing. Therefore, we have to adopt this fact: That the *Ecological Penal Law* should be parallel developed as systematized entity. This process mostly has been going on, until now, at the national law levels, not on the international community level. There were two phases distinctive for it:

First phase, in which states have formed:

- Incriminations, and
- Sanctions,

for the protection of values and rights, but also obligations and duties, important for the environment. In this phase sovereign states not only formulated their native norms, but they also have taken obligation, based on ratified conventions, to include, in their legal systems, rules specifically formulated for the protection of the environment, great number of its elements, as well as for adequate legal treatment of any:

- Right,

- Obligation, or
- Duty,

connected with the environment, or mentioned environmental elements.

Second phase developed over the last thirty years, or more. Through those year, in the aim of protection of values important for the environment, forming of disciplinary rules has started inside the *International Public Law* itself. Specific for this process is that those countries that are Parties of ratified ecological conventions which posses penal norms, think that those norms must be valid also towards the countries that haven't even signed texts of ecologically oriented conventions, not to mention their ratifications. We must have this fact in mind.

(3.) We must also know that, in order to have adequate legal treatment of ecological relation as alive being, it requires forming of the legal norms necessary for administrative apparatus functioning. Functioning of the part of administration obliged to realize all those ecologically oriented legal rules. Therefore, within managing administration, there should be clearly indicated departments (or their parts) that will do this job. Considering Republic of Serbia, we should have in mind two mutually supplemental points:

- Our increased legal obligations on international level, and
- Process of social and national changes that has been going through last 25 years - through period of transition from former SFR Yugoslavia, trough S.R.J., Serbia and Montenegro State, to the moment of Sovereign Republic of Serbia forming.

We also have to be aware that ecological relation, as social and legal, is global, so it should be observed in its interaction duality: As internationally - legal, inseparably connected to inner - legal relations.

Considering clearly its complex nature, we must approach it with elaborated methodology, starting from clearly defined objects and aims, but, not necessarily, with systematization of all those norms that treat them, by unique codifying act - some kind of the Ecological (Environmental) Legal Code[95]. In actual moment such approach to codifying in many states will be to early step, thus making this branch of law and legislation unnecessarily stiff and lifeless at the national law level, but in some other can be indeed acceptable, as, for example, in Australia is[96].

3.3. Possibility of Systematic Development Of the Ecology Law Protection

3.3.1. The Way of Ecology Law Protection Development

Considering possibilities for development of systematized, ecologically oriented legal protection, talking about the protection of *ecos* in totality, as well as all its crucial elements, it is obvious that in an organized society the main importance in realization of this task belongs to various legal mechanisms and instruments. Clearly, they must be established, at first place, by the precisely environmentally dedicated laws, secondly, the organization of necessary state mechanisms and instruments also must be based on the really precisely formulated laws and following sub-laws. Mentioned instruments are:

- Legal principles,
- Rules, and

[95] Work of the codification can be done not by only one, but with series of texts "that, in their totality, put in order some law branch", as have been explained by Livsic, R. Z. (1984), p. 26.
[96] Australia for many years had possessed good basement for the codification of ecologically oriented legal texts, from which logical reason formed and put in force codifying act: Environment Protection and Biodiversity Conservation Act 1999.

- Common Law.

It is also clear that legal principles must be present, in any time and at any place, in process of building and expression of the human environment legal protection. Common Laws also have place of their own, covering, by their existence, those questions that have not been completely explained by legal and sub legal rules. On the other side, they have been built into the *International Environmental Law*. That is the reason that such rules are included in most of the conventions that treat certain objects which *ecos* consists of. Therefore, constitutions of a great number of states formally adopt them. For example: the Constitution of the Federal Republic of Germany, ex-Yugoslavia state and the others[97].

The fact is that the *Ecology Law* is law science branch mostly based on the positive legislations as well the *International Public Law* in the process of constant development. It is considered as branch, because in the last 20 to 30 years many constitutional, legal and sub-legal texts have been passed, which have been dedicated to different problems of the *ecos* protection. Obviously, this has lead, lately, toward attempt to develop their systematization, which, actually, is the main condition for truly creating of this new branch of law.

For example, Republic of Serbia, of which the author of this study is citizen, in the area of the protection and promotion of the environment, has great number of laws (over 50) just as well as sub-legal regulations (over 500), legislative constructions that deal directly and only, or indirectly and partially, with:

- Area and urban planning,
- Protection from the ionize radiation,

[97] See, for example: 1. Greece Constitution, Adopted on: June, 11 1975th, government translation, and 2. Constitution fédérale de la Confédération suisse, du 18 avril 1999 (Federal Constitution of the Swiss Confederation, of 18 April 1999).

- Heath correctness of food,
- Population's protection from contagious diseases,
- Circulation of medicaments,
- Protection of water, air, animals and herbs,
- Circulation of poisons,
- Production and circulation of drugs,
- Circulation and transport of explosive and dangerous substances,
- Cultural property,
- Forests,
- Noise,
- Protection of nature generally,
- Protection of national parks,
- Collection and usage of waste materials,
- *et cetera*[98].

If we observe complex states, for example the United States of America, or ex-Yugoslavia, on federal level, certain areas of the environmental protection have been and are arranged by special laws, which treat regime on the waters of interest for state, and on the international waters, or protection of them from various pollutions[99], hydrometeorology matters considering whole state, transport of dangerous materials, circulation of explosive materials and poisons, chemicals for herb protection, protection from the ionizing radiation, production of drugs, protection from the diseases which affect whole

[98] See, especially, from Joldzic (2006), pp 18-22.
[99] One such example is: Offshore Petroleum (Safety Levies) Act 2003 of Australia, as well as, Australian Environmental Protection (Sea Dumping) Act, Year 1981.

country, production and circulation of medicaments, protection of herbs from the diseases and noxious insects which affect whole country, *et cetera*.

In the Republic of Serbia, the "Law on the Protection of Environment" has been passed with certain numbers of sub legal acts (firstly at the year 1989) and in Montenegro the similar law has been done just at the year 1996. In many other countries such laws had been adopted approximately 10 to 15 years before[100] or later[101].

If we observe Serbian State as example, to this mass of ecologically oriented laws and sub-law acts, about we have spoken, should be added mass of more than 90 conventions of ecological importance that have been included in domestic legislature by the acts of ratifications[102]. Acts by which former Yugoslavia, as the predecessor of actual Serbian State has taken:

- Many ecologically oriented, and
- Purely ecology -- legal international responsibilities.

Realization of responsibilities from those international contracts has been ensured:

1. Through the legislations formulated at the former Federal level, legislative acts which are now inherited by the Republic of Serbia, as well as

[100] For example, in Sweden, Environment Protection Act had been adopted at the Year 1969. See: Sweden's Environment Problems and Protection - 1960–2010, p. 20.
[101] Example is Australian Environment Protection and Biodiversity Conservation Act 1999, Act No 91 of 1999, as amended.
[102] For example approximately the same number as Australia ratified. See: Australian Treaties Database.

2. By the legal acts that had been, from the start of drafts formulating for their ratification, inherent logical and legal products of the Republic of Serbia legal system[103].

Common to all of those rules is to regulate relations of persons, as well as of artificial subjects, towards different material values and processes, as important parts of the ecological system. They regulate them with exactly defined aim of preservation and promotion of all those values, of course by adequate laws and their addendums - sub-laws[104]. All of such values of ecological importance because of their relevance for man[105]. Special quality of such ecologically oriented rules is expressed by their aspiration to protect, at the same time, environmental values of importance for human society as well as nature.

Simultaneously with the forming of this mass of legal and sub-legal constructions, dedicated to the protection of the elements of *ecos* as well as the right of man at the healthy environment, *Ecology Law* has started its development as the new branch of law science and legislatures, started it with numerous scientific works that treat the same problems that legislations had to solve and with the help of mentioned mass of scientific works resolved, step by step. This process especially accelerates by the qualitative efforts and results at the field of the logic of ecology -- legal systematization, furthermore contributing to the *Ecology* (*Environmental*) *Law* development. Therefore, we can now say that the *Ecology Law* has started its parallel road:

- As the part of legislations in great number of states, and

[103] Republic of Serbia now posses more than 90 ratified ecologically oriented conventions as a part of the positive environmental legislation, as specific addendum to the earlier in the text mentioned about 50 inherently formed environmental legal acts.
[104] This easily can be seen through the structures of modern legislatures of: Australia, Canada, Federal Republic of Germany, Great Britain, Switzerland, and United States of America, *et cetera*.
[105] See: Cano, G. (1984), pp 401-402.

- As a scientific branch[106] just as well.

Certainly, this is the road in which we shall have, in future, to put a much more efforts, relaying such efforts on the legal logic, just as well as on the knowledge's of already existing branches of the law sciences and, of course, of legislations. Especially since that giving of the answers for most ecology-legal questions asks for multi-disciplinary scientific approach. Therefore, the only correct way is: The *Ecology Law* must be developed as the multi-disciplinary branch of the law sciences. At the similar way as the Criminology has been developed previously -- on the foundation of *Material Criminal Law* and the *Law of Criminal Proceedings, Legal Psychology, Psycho-Pathology, Sociology, Socio-Economy, et cetera*.

Ecology Law, oriented to its own subject: Entire ecological relation, in the purpose of its improvement, will relay to: *Constitutional, Administrative, International Public, International Private, Civil Law* and *Criminal Law*, on them, because all of these branches have contributed to the solving of different groups of the ecological problems. Both through their general scientific considerations and by forming rules specified to their closer subjects.

In the so far ecology legal matter development (within the ex-Yugoslavia and Serbia just as well) it has been clearly pointed out that the main *ecos* elements are all the elements that constitute various property of general interest[107]. It has been perceived that environment is public property, but the property of present and future generations, for which are economic relations important, so, that "considering legal base, it is easy to separate man's right on healthy environment[108]". In the same time, there is the fact, pointed out that support to this right has been formed by valid

[106] See more in: Joldzic (1988) and Joldzic (2009), pp 137-147.
[107] For example, see: SFRY Constitution, Year 1974, Articles: 85-87.
[108] *Rasprave* (Discusions), Year 1981, Vol. XII, p. 103.

regulations of sovereign states, that regulations can be classified in four groups:

- Those that establish bases of society state and rights of man, including the right "on healthy life[109]" in healthy environment, institutionalizing them by constitutions[110],
- Those that arrange the attitude towards the material values, among which the important place belongs to "elements of nature[111]", and, especially, "air and water[112]",
- Rights of human in social reproduction[113] and
- Those which deal with the questions of rights, duties and proceedings, from the aspects of the *Administrative law* and laws related to it[114].

Many problems of protection and improvement of the *ecos*, which are dealt by the International law, just as well as positive laws of sovereign states, if not even mostly of their parts, represent mutual products of technology and economy[115], demography[116] and urban development of human communities, showed in last few decades. Their characteristic,

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[109] Lamarck, J.B. (1977), pp 772-789.

[110] See, for example: 1. Grundgesetz (May 23, 1949), 2. Greece Constitution, 3. Constitution fédérale de la Confédération suisse (1874), 4. CONSTITUTICAO DA REPUBLICA FEDERATIVA DO BRAZIL (1998); 5. Verfassung des Königreichs Belgienom (1994), Art. 23, and 6. Constitution of the Federal Republic of Yugoslavia (1974), Art. 52.

[111] Paure J. (1979). *Les parcs naturels régionaux en France* (Regional nature parks in France), (Grenoble, Year 1989), pp 10-11.

[112] Despaux, M. (1980), p 12.

[113] Tranin, A. A. (1987), p. 43.

[114] See: Joldzic (1990), p 34 and Joldzic (1995a), p 110.

[115] In connection with economical and technological progress as one of the main causes of the environmental soiling. See: Development et environment - Theme V, United Nations Conference on the Human Environment, Stockholm, June 16, 1972 and UN Document A/CONF. 48/14/Rev. 1 (1973).

[116] Which problem threat, at really qualitative and detailed way: Maedows and Donell: The Limits to Growth.

essentially important for legal approach to this problem, is rapidity and complexity of appearance[117].

Law, as science discipline, mostly has been based on experience, which bases itself on long time knowledge - knowledge about phenomena and processes it treats. Law, as practical and science discipline, approaches to that treatment according to rules of logic. However, human environment, ecological relations related to it, and all its elements, with their complexity and rapid development, don't permit slowly, based on experience, development of rules that will regulate it. There is general need for prompt solution of every problem that occurs, and, in essence, represents the part of ecology relation mosaic - ecology relation mosaic as a whole logical being. Some of such problems to be resolved require great cooperation of other sciences, not only stand alone use of law knowledge, and the other problems don't. When and what is required (more and more often) is cooperation of those sciences with law, so that law can, as prompt as possible, perceive the relation in its essence, and regulate it, according to such essence, in harmony with the present human and other ecologically expressed needs. Therefore, it is obvious that each of those problems has to be approached with:

- Conscious,
- Plan, and
- Logic.

And that have to be used, with conscious and plan, *scientific methods of legislature making*. The same methods, which had been used in previous time, in the processes of formulating the rules of earlier known branches of law, the common law methods[118]. Therefore, lot of states have been using this kind of approach, for decades now, starting from

[117] Šahnazarov (1985).
[118] Lukić (1977).

treating objects separately (one by one), towards their perception with the aim to sort them (group by group), regulating desired relations towards them, by using different categories of legal constructions: Laws, sub-laws, another categories of legal acts, through time even constitutions and constitutional laws. Examples of such constitutional norms of environmental importance are:

- Articles 85, 86, 192 and 210, Constitution of the Socialist Federal Republic of Yugoslavia (from the year 1974),
- Article 24 of Greece Constitution, which establishes the obligation of the State to protect environment of life, and culture,
- Constitution of the Republic of Italy (Costituzione della Repubblica italiana), enacted on 22 December 1947), Articles: 9, 10, 32, and 117,
- Federal Constitution of the Swiss Confederation of 18 April 1999 (Status as of 3 March 2013), Section 4, Articles: 73. - 80,
- The Constitution of the Kingdom of Norway, Adopted on: 17 May 1814, ICL Document Status: 29 February 1996, Art. 110 c, *et cetera.*

Chronologically, firstly had been formed legal constructions concerning certain national parks, later national parks in general. Examples are, the law formulated for the first U.S.A. national park: Yellowstone (1872), parks in: Canada (1887), Mexico (1889), Great Britain (1895), Switzerland (1909) and Italy (1922)[119]. Those legislative acts, since their appearance, have been constantly improved in two directions:

1. Towards better defining on the objects of protection, and

[119] Joldzic (2009a), pp 144-145.

2. More complete and clearer defining the repositories of obligations of the protections (in different states, toward various national parks, with their specific characteristics).

Therefore, U.S.A. have, today, the National Park Service of Federal Administration, which in its business cooperates with the Environmental Protection Agency, while Great Britain has the Administration Council whose members are representatives of the government and local authorities.

The second group object, that has been legally protected, is water, especially in the second part of XX century. Here, before all such legal constructions, should be mentioned law of the U.S.A.: Water Pollution Act[120]‘, supplemented with Clean Water Act[121]. France has the first law on water protection formed at the year 1964 [Water Law, originally named: Law 61-1245 (16 December 1964)]. With this concrete legal construction has been, for the first time in one European country, introduced the law that defined, precisely in details, how to restrict, or suspend, the production, or application, of technology, which produces water pollution. This act precisely defined right of the Prefect (chief administrative officer of a department) to stop, or restrict, production that has too much pollution. The similar law in Italy: Waste Water Discharges Act[122] has been made in 1976. Its importance has been reflected in the fact that this legal text made, for the first time, systematization of ecology legislation, but specified only for water treatment. That means that Italy now treats, within one text, all the waters: a.) superficial, b.) subterraneous, c.) rivers, d.) seawaters, e.) accumulations and f.) springs as well as all the sources of possible pollutions. By the Article 26 of this

[120] Water Pollution Act of the USA, Year 1961, Congress Library.
[121] The Clean Water Act (CWA); 33 U.S.C. ss/1251 et seq. (1977). See also in: US Code, Chapter 26 - Congress Library.
[122] Legge No 319 (Law No 319), of May 10, 1976, known as the Merli Law, essentially Waste Water Discharges Act of Italy.

law Italy had substituted all previous legal acts, which had dealt with all the kinds of waters.

Federal Republic of Germany had done the same thing. For many years Federal Republic of Germany had been treating waters in fragments, by:

- Law on Waterways (from the year 1968),
- Law on Cleaning the Running Waters (from the year 1975)" and
- Law on Water Farms (from the year 1976),
- but the unified Law on Running Waters had been brought, for the first time, in the year 1981[123].

Legislation that treats air protection has been developed in the third quarter of XX century. Examples are: Law on the Struggle against the Polluted Air [Italy, 1966, (L 615/1966)]', Clean Air Act of the USA, Year 1963[124] and 1970[125] and Japan Law on the Atmosphere Control, from 1974.

At the end of sixties and at the beginning of seventies, simultaneously with development of regulatory protection of air and waters, have been mentioned necessities for forming of mechanisms and methods for reaction against illegal actions of all kinds of subjects (physical and artificial), mechanisms and methods which can be available not only to state administrators, or subjects directly offended by pollutions. USA is the first state that includes, in the year 1970, within National Environmental Policy Act, in ecology regulations: *Actio popularis*, institute of the Roman law. The essence of *Actio popularis* is the fact that

[123] For all the mentioned facts connected with the problem of waters in legislature, see: The American Chemical Society journal *Environmental Science and Technology*, Year 1981, No 9, p. 977.
[124] Clean Air Act of 1963. See: Public Law 88-206.
[125] Clean Air Act of 1970. In: US Code, Title 42, Chapter 85.

it can be raised by any citizen (*Quivis ex populo*), "asking the protection of certain...mostly public interests, while he doesn't have to prove the existence of his own interest for the dispute[126]". By this, anyone was, and still is, able to cast imputations on certain legal subject, for what it does -- starting from the fact that is presumable possible ecology harm, based on the fact that accused subject start projecting, or building, certain dangerous object, or start its functioning, providing that this object, according to the way of its functioning, threatens, or causes, harm to undefined circle of subjects. Furthermore, according the "National Environmental Policy Act", *Actio popularis* has to include a demand for *Restitutio in integrum* (return to the previous situation, or status), if any damage has been caused. Many different countries later accept such approach to usage of *Actio popularis* as the institute of the *Ecology Law*. In positive legislation that Serbia has developed in the last years of Yugoslavia *Actio popularis* has been installed by Article 156 of the "Law on the Administrative Proceedings[127]".

Legislation matter which forms the protection from dangerous chemical technologies and products is even younger than the legal protection of waters and air, around the world. In France, Law on Production and Sale of Dangerous Chemical Products is from the year 1977, and in Switzerland it is from 1981[128].

All previously mentioned laws through the time have been followed by more and more numerous sub-legal acts, by which have been:

- Defined sources of pollutions,
- Prescribed limitations for all kinds of pollutions, and

[126] *Enciklopedija prava* (Encyclopedia of Law), p 5.
[127] Zakon o opštem upravnom postupku (Law on the Administrative Proceedings), Year 1997.
[128] Such actual legal act from the Republic of Serbia is: Zakon o hemikalijama (Law on the Chemicals).

- Established obligations, for administrative organs, to form registers of polluters.

In some of ecologically oriented legal acts, as for e.g. in Canadian Clean Air Act (1971) it is gone even further. Canadian Parliament, by mentioned Law, formulated so-called standards of pollution, three kinds of them:

- Allowed,
- Allowed and desired, and
- Levels of pollution on which state apparatus (and the polluter also) is in obligation to instantly attempt environmentally protective measures defined in positive legislature[129].

Legislators had gradually realized that it was necessary to form financial funds, this mean: their resources also, from which will be possible to compensate environmental damage, caused by pollutions. Such approach gradually had worked up to forming of the *Polluter Pays Principle*, firstly at the level of the U.S.A. federal state Connecticut, but the U.S.A. lifted this principle at the Federal level, by Clean Air Act, at the year 1970. Today, this principle is worldwide accepted.

The end of sixties had represented the time of introducing the first steps of *ecology expertise institute*, through the formulation of *Environmental Impact Statement*, within the USA National Environmental Policy Act[130]. By the Act has been introduced the procedure necessary to form adequate valuation of the human activities' influences (mostly through the projects of public economy) on the environment, including the valuation of their possible negative effects,

[129] As have been defined by Article 4, Clean Air Act. For closer look at the mentioned Canadian Act see article by Debora L. Van Nijnatten (1999), pp 267–287.
[130] See: Publ. L. 91.-190.; 83 Stat. 852; Codified, at 42 U.S.C 4331.

just as well as possible alternatives. This principle has been accepted very soon by European countries -- Italy (1971)[131], Sweden (1975)[132] *et cetera*.

For this time is characteristic perception that ecologically oriented protection requires defining, by legal means, not only the protection of individual elements of the environment, but, also adequate formulating of the *national environmental protection policy* – for environment as entity. Therefore, U.S.A. brings specific, environmentally oriented, *Lex generaly*: National Environmental Policy Act, 1969[133], by which then all later laws, specified for the protection of the environment, have been formulated in harmony. This has been followed by Sweden - with the Law on the Protection of the Environment (1969), Federal Republic of Germany -- Law on the Protection of Nature and Care for Land (1976[134]), Law on the Protection of Immission (1990[135]), Law on the Responsibility for Environmental Contravention[136]‘, Switzerland (1983) - Federal Law on the Environment[137], Great Britain - Environment Protection Act (1990[138]), and after them from numerous states too. Through process of these laws’ forming, principles, such as: *polluter pays* and *environmental impact assessment* became constitutional parts of national legal policies of the environmental protection. This is of enormous importance from the simple reason that *Ecology Law*, as a branch of law science and legislature, in process of developing, by them gets its first original and

[131] Decreto del Presidente della Repubblica d'Italia, No 32, 15 Aprile 1971 (Decree of the President of the Republic of Italy, No 32, of the April 15th, 1971) destined to the air protection.
[132] With the Amendment at the Law for the Protection of the Environment (from the Year 1969). This Amendment precisely regulates relations against steel mill, energy power sources and the other economic objects.
[133] National Environmental Policy Act of 1969.
[134] At 20 December, 1976. See: *Bundesgesetzblatt*; T.1. *No* 147; S 3574-3582.
[135] See: Bundesimmisiongesetzblatt; Bundesgesetzblatt (1990). No 1.
[136] See: Gesetsz uber die Umwelthaftung; Bundesgesetzblatt (1990) No 1.
[137] Federal Act on the Protection of the Environment, Switzerland, 7 October 1983, status as of 1 April 2015.
[138] See: Environmental Protection Act 1990 of Great Britain.

generally accepted principles. But it still does not get its *systematization*. What lacks is: Observing of all the elements of previewed legal relations, and realization of common interest of all objects of regulation of desired legal attitude. May be exactly from the reason of deep sub-specialists perceptions on each of them individually, in this time, without global observing of them all, as a total and unity. But, in these days, such observing does not stop any of us, to apprehend them as a total.

Global perception of all analyzed legal products can bring us to some common conclusions:

First - There has been established a solid number of objects - objects of legal regulations.

Second - Law had come to the point where it has started process of regulating from the general elements of attitude towards environmental elements individually: air, water, soil, forest, *etc*.

Third - Traditional regulative methods are applied: Methods of administrative, civil, contractual law (for e.g., between states, and on international level).

Fourth - National legislations form both (a) laws, and (b) sub legal acts, specified for ecology -- legal tasks.

Fifth - Legislation development, all mentioned processes, go on simultaneously on international and national levels.

Sixth - Simultaneously goes on the process of adaptation of existing legislations: civil, economic, traffic, criminal, for the new aim: regulation of the ecological relations.

Seventh - Formed norms can be, according to their characteristics, classified in two categories:

- Preventive, and

- Repressive[139].

Eighth - Common characteristic of all these legal products is that they offer base to the desired treatment of *ecos'* elements -- by the fact that they have, for their object of regulation, individual, or even, groups, of these mentioned elements.

These conclusions that we have formed are valid for modern states, for the Republic of Serbia also[140].

3.3.2. Possibilities of the Establishing and Developing of the Ecology Law Systematic (Possibilities of Systematization)

We think that analyze of steps that we made towards the *ecos'* protection, as well as conclusions that we have formulated and explained, at the previous pages of this text, offer us possibility of much wider view on its possible law protection, than the any one that exists today. Furthermore, this steps offer us personal freedom to form that kind of view about possible *Ecology Law* development in totality, adding to it those separates for which we think that are matured to be observed as its constitutional elements.

If we take into consideration the fact that law regulates, from year to year, much more and more complex and wider, mutual relation between man and the *ecos* in general, although that law science just now realize this fact, regulates all those relations as a specially structured subject, in all its complexity, and doing this with clearly defined aim, common to all elements that form this relation, relation towards: water, forests, mineral wealth, air, soil… and regulates it by complex methods of law science, by

[139]Capitant, Henry (1976).

[140] In fact for any unitary, co-federal, or federal state. This can be seen by simple comparing of legislations, for example of the: USA, Canada, Brazil, Australia, Nigeria, Italy, or any other state.

which its being has been incarnated and studied, it is clear that we can talk about the new branch of law science: *Ecology Law*. On account that *Ecology Law* deals not only theoretical but problems of reality also, concrete problems within the existing communities, legally organized, as well as with the problems present at the international level, we think that we can speak about the *Ecology Law* as the branch of law science, as well as of the contemporary societies legislations', and, of course, the international community, just as well. Clearly we shall permit itself, to formulate this notion: the *Ecology Law* of Republic of Serbia too.

Legal systems have comprehended that certain questions required legal treatment. Having in mind ecological necessities, states formed *ecologized* (norms with parallel environmental aim also) and purely ecological norms, treating with them observed problems. Such problems have been treated by simply constructed and individually oriented norms, or complex legal constructions. Legislations at the region of ex Yugoslavia, Serbia also, have followed this way, too. In the essential phase of development, while there were relatively small amount of rules that treat problem of ecology, connection between them could not be seen, but we think that this is possible for few last decades.

We think that, if we talk about ecological relation in legal-theoretical way, we can observe it in its realization towards exactly specified group objects and that by manifold attitude towards them. We also think that attitude towards those group objects of ecological-legal treatments can be generally grouped at a few ways.

If we are thinking about logically needed and enough to produce adequate collocation of group objects of ecological (environmental) importance we can access to such task, preferably, at two ways.

First, logically most laconic, manner to produce adequate collocation of group objects, thus the base for theoretical and after that practical

formulating the *Systematic of the Ecology Law* is to locate them in two big clusters, which include in it and treat:

I - Attitude towards nature in general, and values that directly come out of it, or the most closely connected to it, and

II - Attitude towards objects of legal-ecological treatment, which actually are the products of human activity, as a complex sum of activities.

Starting from this diversification on two mentioned groups, we can talk about individual relation towards:

I

- Nature in general,
- Mineral wealth,
- Forests,
- Hunting wealth,
- Waters,
- Air,
- Agricultural land,
- Wealth of fauna, and

II

- Articles of the common good,
- Poisons and other dangerous substances
- Ionic radiation,
- Building area:

  a.) Building at the living area, and

  b.) Building at the economic area,

1. Waste materials,
2. Traffic, and
3. Other individual values, which are hard to be classified[141]. We can call them, as it is usual: other values.
4. We also think that values of cultural tradition belong in total sum of these values, so that they should be observed as individual, separated whole[142]. Consequently, acts of the International law that treat this mater are, also, constitutive parts of the law branch we are talking about. The base for this approach we find in the International Law documents, more precisely OUN - UNEP acts, which pay special attention to cultural tradition of humanity[143].

Such approach to constructing of the *Ecology Law Systematic* we had expressed nearly thirty years ago, in our doctorate at the University of Belgrade Law faculty as well again in the book Environmental Criminality in Law and Reality[144]. In the concerned text we also had emphasized that is possible another, not so laconic access.

Having in mind the fact that we emphasize reality that law, as scientific and practical discipline, is anthropocentrically oriented, as well as that this is not only our way of thinking but now globally accepted, we thing that is also possible another way to construct *Systematic of Ecology Law*, of course at the laconic way also. Starting point for this, second logical way, of the *Ecology Law Systematic* formulating is basic fact that all the law, which finally means legislative, elements have been created

[141] See more about the conclusions and classification at Joldzic (1995) Ecology Criminality in Law and Reality (2nd. Ed.), pp 109-110.
[142] This attitude represents Dupuy, R.J. (1985), p 20.
[143] Thus, for example, register monastery Studenica (1986) and Natural and Cultural-Historical Region of Kotor (1979), cultural heritage of the Serbian people, at the Register of the World Cultural Heritage, insuring them international-law protection in peace and war. See: UNESO - World Heritage List.
[144] See: Joldzic, Vladan: Environmental Criminality in Law and Reality (1st Ed).

for human society organizing. This also means for the regulation of conduct, conduct of subjects: man, artificial persons, as well as the organized human societies, at first place states, but also the elements of international community. Such our approach also, logically, lead to conclusion that what we at the first place have to observe, in our thinking about the needed *Ecology Law Systematic*, are human rights, although we are directed at the ecological values protection also and at the same time. From this reason we think that the Systematic of the *Ecology Law* consist of four complex contents:

I - At the first place we locate: Right of man at the healthy environment.

II – *Natural values* of the environment protection is, we think, second logical group object of the *Ecology Law Systematic*.

III — *Protection of the environmental values produced by human doings* is third big logical entity of the *Ecology Law Systematic*. Or to say at another way: Environmental values produced by human doing protection.

IV – Final, fourth big law-logical entity, we think, has to be: *Treatment of the group objects whom are inherent risks*.

Diversification of the Systematic at the four basic groups leads us to talk about possibilities to observe law-logical relations towards practically twenty group objects of law observing, as well as legal threatening of the relations connected to them or from the reason of their existence and characteristics. Allow us to explain this.

I - *Right of man at the healthy environment*, as we have pointed, is one of key human rights, right which is necessary to be achieved in reality from the simple reason of human survival, as well as the basic condition for qualitative living of man and the concrete society. This right, we think, include itself two complex logical entities:

- Right of man on the healthy living environment and
- Right of men on healthy working environment.

Right of man on the healthy living environment has its logical rout in the elements of the Universal Declaration on Human Rights[145] and evolutional elements in a number of consequential conventions of global importance for human rights, such, for example, are: International Covenant on Economic, Social and Cultural Rights[146], International Covenant on Civil and Political Rights[147], Stockholm Declaration[148], Declaration on Human Rights[149] and Need to ensure a healthy environment for the well-being of individuals[150].

Right of men on healthy working environment is fundamental part of human rights from the simple reason that without such working environment nobody can be healthy, especially if works for a long time in the environment which we can from many reasons observe as unhealthy. Under the influence of some working environments man can even get hard illness or even die. This is the main reason why International Labor Organization[151] formed mass of adequate conventions of global importance, conventions aimed for the workers protection from negative influences at the working places and around them[152]. Also why states

[145] Universal Declaration on Human Rights (1948).
[146] International Covenant on Economic, Social and Cultural Rights (ICESCR), Year 1966.
[147] International Covenant on Civil and Political Rights (ICCPR), Year 1966.
[148] Originally named: Report of the United Nations Conference on the Human Environment, Stockholm, 5-16 June 1972, hereinafter Stockholm Declaration.
[149] Vienna Declaration and Programme of Action, Year 1993.
[150] Need to ensure a healthy environment for the well-being of individuals, General Assembly 68th plenary meeting, General Assembly Resolution, 14 December 1990.
[151] International Labour Organization, specialized agency of the United Nations, 4 route des Morillons, CH-1211 Genève 22, Switzerland.
[152] Such conventions, for example, are:
International Labour Office (ILO) White Lead (Painting) Convention, Geneva Session, Date of adoption 19: 11: 1921. Source: International Labou Organisation Library – ILOLEX,
C139 - Occupational Cancer Convention, 1974 (No 139), also known as:

constantly form adequate legislative, which means legal and sub-legal, acts based at such ILO conventions and recommendations.

II – *Natural values of the environment protection*, second logical group object of the *Ecology Law Systematic* that we dispart from the entirety of environmental values, also is complex, synthesized from a number of distinctive objects, objects, at the same time values, which the elements of modern legislatures treat by a number of legal and following sublegal acts. Such values can be separately observed and treated, as the legislatures of modern states show us, but not necessary by the same order, through the protection of relationships toward:

1. Nature as a whole, as well as the specially protected natural values, which is the first protected group objet in most ecologically (environmentally) oriented legislatures,
2. Waters, which means waters of: rivers, lakes, underground waters, but also of seas and oceans,
3. Air, which include the protection of air generally but also of troposphere ozone layer as well as the protection of unwonted effects of ground-level ozone,
4. Land and soil, not only of agriculture importance but for many other purposes,

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Convention concerning Prevention and Control of Occupational Hazards caused by Carcinogenic Substances and Agents (Entry into force: 10 Jun 1976), Adoption: Geneva, 59th ILC session (24 Jun 1974) - Status: Up-to-date instrument (Technical Convention).
Convention Concerning the Protection of Workers against Occupational Hazards in the Working Environment due to Air Pollution, The 63th General Conference of the International Labour Organization, Geneva, 20:06:1977. Source: ILOLEX Library.
Convention concerning Occupational Safety and Health and the Working Environment, also known as the: C155 Occupational Safety and Health Convention, Year 1981, Geneva, Switzerland.
Convention Concerning Protection Against Hazards of Poisoning Arising from Benzene, also known as the C 136 - Benzene Convention, (Year 1971), The General Conference of the International Labor Organization, Geneva, Switzerland,
and many other, in this moment more present and in force are more than 170 of them.

5. Forests,
6. Flora,
7. Fauna, especially animals of importance for human society,
8. Hunting, and
9. Fishing.

We remind readers that the elements necessary for regulating of diverse questions and problems of adequate relationships of man and human societies toward previously mentioned ecological values have been developed through decades at two levels: international and of national states legislatures.

III — *Protection of the environmental values produced by human doings* is third big logical entity of the *Ecology Law Systematic* at which we have to point our attention. It is logically consisted of two separates:

1. Construction, and
2. Protection of the cultural values.

Construction is the field of importance for the building of various economic and non-economic objects, objects that are treated mainly, but not only, by national legislatures, their legal and sub-legal acts. Many objects such are: airports, ports at coasts of: Trans-border Rivers, lakes and seas, have to be constructed from the very start accordingly to internationally established rules[153], not only by rules originally formed (regulated) by the inherent national legislatures.

[153] See, for example:
Convention on International Civil Aviation (also known as Chicago Convention), signed on 7 December 1944, and two of annexes:
Annex 14 – Aerodromes, and
Annex 19 – Safety Management, and the
Convention for the Protection of the Mediterranean Sea Against Pollution (Barcelona Convention) Year 1975, that also treat problems of land based sources, between them ports and their constructing and use,

Protection of the cultural values is second, complex and really important, logical part of the complex object of the *Ecology Law*: Protection of the environmental values produced by human doings. As such idea for the protection of cultural values had been expressed especially, about sixty year ago, within the scope of UNESCO, by the efforts to form the Convention for the Protection of Cultural Property in the Event of Armed Conflict[154], hereon by the Nubia Campaign in the years 1959 and 1960 to protect the elements of Abu Simbel and the other archeological heritages[155], hereafter UNESCO produces, at the year 1970, the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property[156], and, shortly after that, the World Heritage Convention[157]. Aforementioned conventions of global importance have been followed by many texts of continental and local importance, to name some of them mostly formulated by the Council of Europe[158]:

- The European Cultural Convention (1954),
- The European Convention on the Protection of the Archaeological Heritage (ETS No 66, London, 6 May 1969),

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texts that also have articles of importance for constructing.

[154] The Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict is the first international treaty that focuses exclusively on the protection of cultural property in armed conflict (May 14, 1954).

[155] To be precise, in the year 1960, the Director-General of UNESCO invite the Member States to be included in an "International Campaign to Save the Monuments of Nubian", process of saving the archeological and other historical objects that has been successfully finished at the year 1980. See: http://whc.unesco.org/en/activities/172.

[156] Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, adopted at the 16th General Conference of UNESCO on 14 November 1970 in Paris, France.

[157] Originally named: Convention Concerning the Protection of the World Cultural and Natural Heritage, done at the General Conference of UNESCO, 16th November 1972, Paris, France.

[158] The Council of Europe was founded on 5 May 1949 by the Treaty of London, also known as the Statute of the Council of Europe.

- The European Convention on Offences relating to Cultural Property (ETS No 119, Delphi, 23 June 1985),
- The Convention for the Protection of the Architectural Heritage of Europe (ETS No 121, Granada, 1985),
- The European Convention on the Protection of the Archaeological Heritage (ETS No143, Valletta, 1992),
- The European Landscape Convention (ETS No 176, Florence 2000), and
- The Framework Convention on the value of Cultural Heritage for Society (ETS No 199, Faro, 2005).

All the mentioned conventions and their annexes, gradually, from year to year, had developed principles necessary for the adequate relations toward cultural values as well as the elements of connectivity between states at the field of cultural properties protection. All those documents of *International public law*, by the principles that established, also had produced necessary base elements for formulating norms needed for processes of developing the elements of harmonized national legislatures aimed for cultural values protection.

We think that presented systematization (systematic) of group objects in two or four big groups can be applied to the *Ecology Law* in general. This means: Not only to the *Ecology Law* and legislatures inside sovereign countries, but at the *International Environmental Law* just as well. Of course, *Systematic of the Ecology* (*Environmental*) *Law* that we formed is liable to some later processes of logical refinements, by the other authors, which can lead to slightly or more different viewing on group objects constructing, but, we are sure, toward, practically, the same list (catalogue) of objects we had formed more than thirty years ago, legal relations connected with them, that have to be treated by the *Ecology Law*.

IV – Final, fourth, also big and complex, law-logical part of the *Ecology Law Systematic*, we think, has to be: Treatment of the group objects whom are inherent risks, logical part synthesized from a number of distinctive objects that modern legislatures treat by specific, specialized, legal and with them connected sub-legal acts. Of course treat all them from the anthropocentric and, at the same time, ecological reasons. Such way of thinking leads us towards the elements of legislatures that treat questions, this means: rights, obligations, duties and responsibilities connected with the:

1. Mining, which include deep and surface mining,
2. Ionizing radiation, from materials and various devices produced by human doings,
3. Non-ionizing radiation,
4. Nuclear security,
5. Toxins and the other dangerous matters,
6. Accidental situations, but not only natural accidents,
7. Traffic, all the kinds, which means: air traffic, traffic at the waters, by trains, at the all road categories,
8. Noise, and
9. Wastes.

Forming and explaining, at theoretical, logical as well as practically applicable way, *Systematic of the Ecology Law* we have done great part of necessary efforts at the field of the *Ecology* (*Environmental*) *Law* forming as the independent law science discipline, but, in such efforts, it is also necessary to consider the relations between the *Ecology Law* and some number of the other law science disciplines.

CHAPTER 4

MUTUAL RELATIONS AND BOUNDARIES BETWEEN ECOLOGY LAW AND THE OTHER LAW BRANCHES

4.1. Principle Remarks on the Mutual Relation and Boundaries of Ecology Law and The Other Law Branches

Becoming engrossed in *Ecology Law* researching, which is, by no doubt, very complex, evidently multi-disciplinary law branch in the process of constant development[159], we think that it is necessary, on the very start of our scientific efforts, to answer at the questions of mutual relations and feedbacks of the *Ecology Law* and the other law branches, from the reason of better understanding the *Ecology Law* logic, fundaments, processes and possible results. Hence chapter Mutual Relation and Boundaries of Ecology Law and the other Law Branches represents the author's effort to explain, at the laconic way, basic matters, differences, connections and boundaries of the *Ecology Law* and: *Constitutional Law, International Public Law, Administrative Law, Civil*

[159] Topics on Environmental Law development see at Joldzic (2009a), pp 127-169.

Law, as well as *Penal Law*, which are the law branches of utmost importance for the *Ecology Law* forming and inculcating, practically in any state. But to understand mentioned mutual connections, relations and feedbacks we have to start from some really theoretical points.

In a picture of law system, Brazilian, German, Serbian, French or any other, its elements and their mutual relations, determining fact is subject of arrangement of specific law branch through the masses of various positive legal rules. In accordance with long time present opinion of some number of lawyers, entire positive law is able to be assorted into four groups of regulations:

First group can be made of regulations that establish bases of society, at the first place fundamental norms for the state functioning, as well as norms that establish and regulate human rights: *Constitutional Law regulations*[160],

Second one is consisted of the legislative elements that regulate relations toward material values on the socio-economic settlement of state[161],

Third group is consisted of the regulations that establish human rights in reproduction[162], and

Fourth group of regulations is composed of those norms that deal with questions of rights, duties and procedures from the aspect of administrative or similar law branch[163].

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[160] On the Constitutional Law fundaments, especially for Environmental Law, see more at: Joldzic, V. and Milicevic. G. (1995b), pp 1-35.

[161] This also means: To formulate material-legal fundaments for environmental law norms formulating, including so colled environemtal incriminations. For formal material-legal fundaments see Joldzic, V. (2009b), pp: 69, 110 and 512.

[162] Reflections on human rights in reproduction see, for example, in:
On the Horizon - A practical bulletin on what is ahead in the field of business and human rights, (Year 2008, Issue 8), pp 1-7, and
Rendtorff, J. D. (2009), p 416.

Inside every mentioned group are present rules that directly, or indirectly, contributes to arrangement of the total law-ecological relation. From this reason our interest is to perceive, as accurately as possible, relations between *Ecology Law* and mentioned groups.

In answering the question of mutual relation and bounding of ecological and the other law branches, it is advisable, before all, to start from verification above-mentioned multidisciplinary logic of *Ecology Law*. Professor Popovic has spoken about it in his book assigned for air and water protection (from 1975), and again in 1980[164]. Today this fact is widely and long time accepted at the world's law science[165].

Second step in our contemplation about ecological and the other law branches relations and logical borders is inevitably based on our method, or methods, of mutual mark of boundaries: Where stops one, and begins another law branch, particularly having in mind attitude of numerous jurists on explicit addiction of ecologically remarkable elements from the other law branches, starting by using its terminology, up to spotting and understanding of certain purely *Ecology Law* principles.

Opposite to many jurists we are supporters of the attitude about autonomy of the *Ecology Law* - its autonomous place in law science system and positive legislatures, beginning from the fact that it has:

- Its autonomous applying range – *specific general object*[166], independent from the other law branches;
- *Dictionary*, made during last decades, but also an number of

[163] See more at: *Rasprave* (Discusions), (1981), Vol. XII p. 103, and Della Cananea, G: (2010), 207.-215.
[164] See: Popovic, S. (1980), pp 13-12.
[165] See closer: Tautenberg, Johnson (1985), pp 233-237.
[166] Closer reflections on specific general object defining see at Chapter 2 - Defining of the Elements Necessary for the Existence of Ecology Law, in the Joldzic, V. (2009b), at pp 134-136.

- *Autonomous principles*.

"In law theory it is usual to use two criteria to mark boundaries between certain law branches:

1. Either the criterion to mark boundaries between law branches is object treated by the law rules of certain law discipline, or
2. The criterion is manner -- method of regulation[167]".

Speaking about the *Ecology Law*, we have to see how, as every law branch, it, in essence, regulates law relation - relation of a special kind. Exactly as *Civil Law* regulates Civil Law relation, *Material Criminal Law* – material-criminal law relation, *Criminal Procedure Law* regulates relation in criminal procedure, *et cetera*. We are free to name this relation as the *Ecology Law Relation*, having in mind that nearly thirty years ago Tautenberg Jonson spoke about necessity of realizing the fact that such *Ecology Law* relation had been differentiated as the specific kind of law relation through a number of acts of legal importance[168]. We want to be precise: Ecology Law Relation is the subject matter of the *Ecology Law* branch -- key *differentia specifica* that establishes difference between *Ecology Law* and the other law branches.

Starting from *methods of regulations*, it is useful to realize that certain law branches, in regulation of mutually equal relations of the law subjects, use the *coordination principle* as a basic one (e.g., Civil Law), while the other branches as their fundamental regulation method utilize the *subordination principle* (e.g., *Administrative Law*). *Ecology Law*, as multidisciplinary law branch, is based, parallel, on both methods, present in most law branches. Thus, building the elements of *International Law* regulation assigned to ecosystem, it is relating on coordination[169], while

[167] Popovic, S. (1989), p. 15.
[168] Tautenberg J. (1985), pp 233- 237.
[169] In accordance with the: Vienna Convention on the Contractual Law (1969), p. 331.

establishing law relations in states *Ecology Law* (to be precise: Legislator) is going, logically, toward using of the *subordination method*, as a fundamental.

In scientific efforts at the field of *Ecology* (*Environmental*) *Law*, starting from previously explained elements, we have to recognize facts of mutual relations, from this reason boundaries between a solid number of independent law and legal disciplines, their connections and elements of distinctions with the *Ecology* (*Environmental*) *Law*. It is logical to analyze, at the first place, relations between fundamental laws (constitutions) and the *Ecology* (*Environmental*) *Law*.

4.2. Relation between Ecology Law and Constitutional Law

Speaking about relation between *Constitutional Law* and *Ecology Law*, it is useful to have on mind preference of *Constitutional Law* over the other law branches, concerning that *Constitutional Law* as:

1. The branch of law science contains principles, and
2. That fundamental law of every state possesses norms of importance for all branches of legislatures, formulating basis and limits for all the laws at the national level.

In the positive law of modern countries, European before all, parallel with maturing and complexity of ecological problems, often is present phenomenon and obligation of developing the constitutional rules directly aimed on inauguration of adequate legislative regulation of ecological relations[170]. This had been obvious in contemporary law of the Federal

[170] Examples for this are: 1. Fundamental Law of the Federal Republic of Germany, first issue of the *Federal Law Gazette*, dated 23 May 1949, as amended up to and including 20 December 1990, for theme important is version dated at the March 18, 1971, that establishes competence of the Federation at the field of fauna and flora protection, 2. Constitution of the Greek Republic, Article 24, which establish "state obligation for the protection of the life and

Republic of Yugoslavia[171], and is obvious, for example, in the actual law of the Federal Republic of Germany, Swiss Confederation, Republic of Serbia and many other states. Concerning the importance of constitutional determinations for *Ecology Law* developing, we think that they should be analyzed to the certain degree.

If we analyze, for example, Constitution of the Republic of Serbia, we can see many elements present not only in this fundamental law, but in many modern constitutions, which is fact of great importance for our analyze. Framer of Constitution of the Republic of Serbia has non ambiguously emphasized that Republic is State, based on equality of citizens[172], with full respect of human freedoms and rights[173], clearly ordering that freedoms and human and citizen rights[174] are realizing, and duties fulfill[175], upon Constitution[176], simultaneously proclaiming man' right on "healthy life in healthy environment[177]" and duty of State "to take care about healthy life in healthy environment[178]".

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cultural environment", 3. Constitution fédérale de la Confédération suisse du 18 avril 1999, Articles 73. – 80.), and many other.

[171] See previously in the text mentioned book of Joldzic, V. and Milicevic, G. (1995b).

[172] Compare, for example: 1 - Ustav Republike Srbije (Constitution of the Republic of Serbia) (2006) , Article 11, 2 - Federal Constitution of the Swiss Confederation, of April 18, 1999, version of September 18, 2001, Article 8, and 3 - La Constitution du 4 octobre 1958; Révisions constitutionnelles de mars 2005 (French Constitution), Article 53-1, also its' Charter for the Environment, Article 1.

[173] For example, compare with: The Constitution of Greece, Article 25 - Protection of Fundamental Rights, and La Constitution du 4 octobre 1958; Révisions constitutionnelles de mars 2005 (French Constitution), Article 53-1. Also its' Charter for the Environment, Article 1.

[174] See, for example: Constitution of the Swiss Confederation, Article 2, and The Constitution of Belgium, Coordinated text of 14 February 1994, Article 23, Supra note 3(4).

[175] For example, precisely defined in the Charter for the Environment, of the French Constitution.

[176] See: Constitution of the Republic of Serbia (2006), Article 1.

[177] Ibid, Article 31, supra note 1.

[178] See:Brazil Constitution, Article 224, supra note 1, as well as The Constitution of the Republic of Serbia, Article 31, supra note 2.

As we saw, in modern states, constitutions ordered that state brings and performs laws in area of freedoms, rights and duties of man and citizen, at first place, by establishing:

- Human rights[179], and especially
- Responsibilities and sanctions for violation of freedoms, rights and duties of man and citizen[180], and
- Bases of environmental protection as well[181].

Speaking about bases for environmental protection legislator orders quite precisely that, if we (for example observe Republic of Serbia) have right and duty to make and put in power laws applied for environmental protection, we also have right to ratify international conventions of the environmental importance too[182]. Man, with ratified contracts that concern the *International Environmental Law*, completes duties and defines borders of positive ecological legislature. This means: of the Republic Serbia also[183].

We have to emphasize that in this part of the text are annotated only relation and mutual connections between *International Public Law* and *Constitutional Law* branches as scientific and practical law disciplines, not the role of *International Public Law* and its constitutional elements in the processes of *Constitutional Law* elements forming, elements which are of utmost importance for *Ecology Law* in modern states, not only as the science but at the first place as the practical disciplines.

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[179] See: Constitution of the Republic of Serbia, Article 1.
[180] Ibid, Article 12, supra note 3 and 4.
[181] See, for example: Constitution of the Republic of Serbia, Article 72, supra note 5, or Costituzione della Repubblica italiana (Constitution of the Italian Republic) (1947), Article 117 (s).
[182] See: Article 73, supra notes 2 and 7, of the Constitution of the Republic Serbia.
[183] About this moment see: Joldzic, V and Milicevic, G. (1995b), pp 2-5.

4.3. Ecology Law and the International Public Law

International Public Law at the same time represents law science discipline and group of norms who's main -- general study topic, and the object of regulation, is, before all, mutual relation between states[184], as subjects of law[185]. It has several branches and their sections. Most important for us among them are International Law branches that treat:

- Use of water[186],
- International Maritime Law[187],
- International River Law[188],
- International Law For Using Biological Sea Resources[189],
- Branch whose topic is energy[190],
- International law branch for using biological resources[191],
- Air Protection[192],

[184] Or to say, briefly, fundamental postulate of Anzilotti's work: International law regulates reciprocity relations of the states. See: Anzilotti, D. (1929), pp 466-534.
[185] See closely at the: Enciklopedija prava (1989) p. 794, as well at the Avramov, S. and Kreca, M. (1993), pp 1-8, and Kent McKeever, K. (2006).
[186] For example see Convention on Fishing and Conservation of the Living Resources of the High Sea and Barcelona Convention for the Protection of the Mediterranean Sea against Pollution.
[187] With so many elements exceptionally explained in massive book by Tetley, W. (2003).
[188] See, for example: Bourne, Ch (1971), pp 193-202.
[189] For example, see: Dupuy, R-J. and Vignes, D. (1991), pp 993. - 996.
[190] Treated, for example, at the level of law science, at the journals like *Journal of World Energy Law and Busines* (Oxford).
[191] See: Redgwell, Catherine and Bowman, Michael (1996).
[192] See, for example: 1. - Treaty Banning Nuclear Weapon Tests in the Atmosphere, in Outer Space and under Water, in: Joldzic, Vladan and Milicevic, Gordana (1995), p. 72, 2. - Convention on Long-range Transboundary Air Pollution (Year 1979), in Joldzic (2006), pp 61-63, 3. - Vienna Convention for the Protection of the Ozone Layer (March 22nd 1985), in Joldzic (2006), pp 64.-65, and 4. - Convention on Environmental Impact Assessment in a Transboundary Context.

- Branch that treats protection of flora and fauna around the World[193],

as the others branches, in process of continual establishing and development. Establishing and development expressed through continual developing of rules connected with their group objects, rules applied for regulating some of the ecological-law relation elements, or applied for regulating some other matter not necessary purely ecological, by which, also and parallel, create legislative elements of ecological importance, and included them into development of *Ecological Law* regulation on the international level.

Entering the *International Law relations* on the occasion of the environment, we always have in mind and insist on the fact that *International Environmental Law* is in process of constant developing through the practice of international contracts concluding, on the basis of using general law rules, as well as on formulating new specialized rules, on condition that they are consisted under massively adopted contracts, which treat some of questions and relations of importance for the *Ecology* (Environmental) *Law*. In the other words, the International Law sources lie in common will of states, so, that sources itself, in formal sense, are concrete formal law acts through which law rules are manifested. By the acts of ratifications, as the acts of expressing sovereign states will, those rules become integral part of positive *Ecology Law*, this means of national legislatures also, between them of the Republic of Serbia too, as key legislative elements that regulate relations at two levels:

1. *International level*, this means relations between, from the one side, the *International Public Law* and its constituent part *Internal*

[193] See legislations, for example, of: 1. - Japan: Law for the Conservation of Endangered Species of Wild Fauna and Flora (Law No 75), Tokyo, Publisher: Ministry of the Environment, Government of Japan, Year 1992, and 2 - Australia: Flora and Fauna Guarantee Act 1988 (Victoria).

Ecology (Environmental) *Law* and, at the other side, of sovereign states and their legislatures[194], and

2. *National states levels*, this means the relations between subjects of law under the sovereignty of the state, regarding their rights, duties, obligations and responsibilities connected with the values and procedures of ecological importance that are regulated by national legislatures with their legal and sub-legal acts.

Of course, in this part of text are explained relations and mutual connections between *International Public Law* and *Ecology Law* as science disciplines and practical branches of law, not the role of *International Public Law* and its constitutional elements in the processes of the *Ecology Law* forming as science and especially as practical discipline.

4.4. Relation between Ecology Law and Administrative Law

Administrative Law, as a part of law science, but also as a part of positive law of sovereign states, represents very complex law branch that deals with specific kind of law relation: *Administrative Law* relation, in all its complexity[195]. It is based, as a part of positive legislature, before all, on norms "which are used for regulation of social relations in connection with the organization and activity of public administration[196]". *Administrative Law* is composed of general rules that regulate relationships between authorities and the citizens, rules that regulate citizens' rights and obligations against the authorities. It is a part of the *Public Law*, which deals with the

[194] See: Joldzic (2006), pp 30–44 and Joldzic and Milicevic (1995), pp 17-26.
[195] Administrative-law relations see closer, for example, pages 16, 17 and 26 of text: Administration and You: Principles of Administrative Law Concerning the Relations between Administrative Authorities and Private Persons (1997).
[196] Popović, S (1989), p 4.

organization, the tasks and the acting of the public administration. It also contains: rules, regulations, orders and decisions created by and related to state authorities, administrative agencies and services, at all the hierarchical levels. We emphasize that *Administrative Law* functions on the base of its four main principles:

1. *Principle of the Legality of the State Power*, which means that there is no acting against the law and no acting without a law,
2. *Principle of the Authority*, which means that the state apparatus function against the subjects of law under its sovereignty with the stronger will,
3. *Principle of Legal Security*, which includes a principle of legal certainty and the principle of non-retroactivity, and
4. *Principle of Proportionality*, which says that an act of an authority has to be suitable, necessary and appropriate[197],

in processes of practical regulating relationships between authorities and the subjects, physical and artificial persons, under the state sovereignty.

Diferentia specifica of *Administrative Law* relation is expressed by the fact that one of the sides in this relation is "by rule, the organ of the State administration[198]". Exceptionally, such side in legal relational could be an organization as well (not the organ of the state administration), authorized, by law, or resolution conceived upon law, for performing concrete *Administrative Law* duties, which means that this organization possess specific public authorizations.

By doing *Administrative Law* duties, the organs of the state administration, and the organizations that are authorized for specific jobs, within their authorization (defined by acts and sub-statutory acts),

[197] Oberrath, Jörg-Dieter, Schmidt, Alexander and Schomerus, Thomas (2009), pp 12-14.
[198] Popović (1989), p 7.

"concerning specific subjects, appears toward another subject of concrete relation with stronger will - with authority, with orders which are obligatory for subjects to whom they are related[199]''. This is the second, key *differentia specifica* of *Administrative Law* concerning other law branches[200]. In *Administrative Law* relation authorized subject appears with stronger will. "By its disposition, concerned organ of administration, or subject authorized to do some of the administrative affairs, obliges other subject even against its will[201]''. Obliges mostly with the act in the form of *decision*, act which conceives the above-mentioned relation. Authorized subject brings decision on the base of laws and sub statutory norms (in the form of addendums). By such legal act: *Decision*, authorized subject form mentioned relation. Authorized subject form his *decision* on the basis of norms that are regulating some desirable side of environmentally oriented public relation, and norms that authorize him as a part of administrative establishment, in concrete *Administrative Law* relation. Therefore, the main characteristic of *Administrative Law* is that its basic -- general subject is: *Administrative Law Relation*, as well, as all law elements that have influence on its formation and development.

Ecology Law for its *basic subject* has *Ecology-Law Relation*, this mean, at the first place, Human relation, but also relations between artificial persons as well as the physical and artificial persons, regulated by norms, formed on occasion of some of the objects, which is expressed as a constructional element of the *ecos*. In their narrower determination, those elements are expressed as a *group* and *individually grammatical*[202] and *protected objects* inside *ecology-law relation*[203]. The regulation itself

[199] Ibid, p. 7, passage 4.
[200] For example: In relation with Civil-Law relations, characterized with formal equality of the wills.
[201] Popović (1989), p 8.
[202] More often, but not ever.
[203] It is useful to know that *grammatical object* is, in *criminal law theory*, object on which any criminal activity was done. It is not necessary that this object is at the same

of these relations, in practice, is very often based upon rules of *Administrative Law* logic conception. Therefore, by expressing superior will of the authorized subject. That is the common line of the *Ecology Law* with the *Administrative Law*, from where it absorbs important part of its logic and application. Things that differentiate them are:

- Type of relation, and
- General object of regulation.

As we have already noticed, Ecology Law regulates Ecology-Law Relation, Administrative Law: Administrative-Law Relation.

Object of regulation and law treatment of the *Ecology Law* is *ecology-law relation based on ecological rights and values*, observed as entity, as its general object.

General object of *Administrative Law* is expressed as a public law relation.

Ecology Law, in great part of its development, has to rely upon the *Administrative Law* elements realizing. Very often to exists through the application of *Administrative Law principles* and norms. Clearly, some of these principles, as well as mentioned norms, observed by: law-logical, normative-hierarchical, or dogmatic method, have their different places in the *Administrative* and the *Ecology Law* system precisely, because of mutual differences between general subjects of the two observed law branches. This is the main reason why their general subjects and those

---

time, object on which will be produced *consequences*. Also, we can see that criminal activities are pointed on – so called *object of offence*. May be that the object which we observe is by legislation *protected object*, object on which we can see results (consequences) of criminal activity? In many cases: a.) *grammatical*, b.) *object of offence*, and c.) *protected object*, is the same object, but not in every case, in accordance with the *Criminal Law* theory we can, for the purpose of the *Ecology Law*, say that:
Grammatical object is object on which activity of ecology law relation was done,
At the place of the *object of offence* is *object of activity*, and, of course,
Ecology Law also has *protected objects*.

mentioned principles, of the *Administrative Law* and the *Ecology Law*, are the elements of their mutual demarcation, also of the necessary cooperation.

Of course, as for the previously explained relation and mutual connections between *International Public Law* and *Ecology Law* as science disciplines and practical branches of law, relation between *Ecology Law* and *Administrative Law* is, in this part of text, explained also, but some *Administrative Law* elements also deserves separated, although laconic, description. This will be presented at some of later text pages, part that elaborates some crucial questions connected with the *Administrative Law* elements of importance for the *Ecology Law* developing and practical enforcement.

4.5. Relation between Ecology Law and Civil Law

Main characteristic of *Civil Law* is that it regulates property relations between persons (physical or artificial) as subjects of law and legislature. These relations are expressed as a general object of studying and regulation by *Civil Law*. Regulation itself, of those relations, is based, mainly, on dispositive rules - rules expressed in so called *dispositive* norms, norms that permit choice (disposition) in personal approach to the concrete law relation forming. This means that subjects, who are independently entering mentioned relation, are forming, by their will, dispositions for regulation of concrete relation, or relations, on the base of the general rules and within the scope of *Civil Law*. In forming of disposition, or dispositions, they formally possess equal will. This means: Possibility of its expression in making concrete law relation. At the same time, this individuality in regulation means ability for subjects, in accordance with their will, to re-regulate, or break this particular relation.

Ecology Law, in arranging the ecology-law relation, does this by norms which possess imperative nature (so called *ius cogens* norms). It orders bounds to behavior toward goods that make *ecos*. Subjects who are stepping in ecology-law relation have not any opportunity for dispositive behavior, and their will, in principle, cannot be expressed by dispositive rules. The only exception would be *ecology-law relation* conceived between subjects of law, when two or more subjects decide, by their will, to make contribution to eco values, contribution on which they are not obliged by any *ius cogens* norm of the legislation oriented on the *Ecology Law* field. This mean, in essence: They are conceiving *Ecology-Law relation* and *Civil-Law relation*, and from this reason is present freedom, as well as equity of their will, in forming of disposition (dispositions) by which the property relation, composed within wider *Ecology-law relation*, is regulated. This means also that such relation treats at the same time, by same legal act, not only relation concerning propriety, but a wider one: *Ecology Law relation.*

Other possibility between *Ecology Law relation* and *Civil Law relation* exists in making ecology-material damage to some subject of law, when perpetrator (committer) has précised duty, by the rules of *Civil Law*, to compensate, or repair, produced damage[204]. This kind of relation is a common occurrence in reality.

With regard to noticed contact points and interlacing of *Ecology Law* and *Civil Law*, the question arises: On which way, in reality, we can fix the boundaries between these two kinds of relations? Answer is, in essence, very simple. As we have already stressed, the *Civil Law* relations are characterized by *dispositive*, and the *Ecology Law* relations are characterized by *norms of imperative nature* and *subject will inequity* (that follows from it). Thereby, it is useful to discern:

[204] See: Salma, J. (1991), pp 74-80.

- Toward which kind these concrete norms belong to, in observed real law relation, and
- If both sides are present, then, which norms are primary?

This is one of our common tasks at the field of the environmental protection, our expressed efforts, hawing in mind that values of ecological importance also can be measured by many.

4.6. Relation between Ecology Law and Penal Law

Penal Law is complex law branch which consist of two, in some states of three disciplines:

- Criminal Law,
- Economy Violation (in the states formed from ex-Yugoslavia republics), and
- Infringement Law.

Their common characteristic is ordering of sanctions for prohibited behavior of law subjects, defined precisely by law (so called *incrimination* -- determining the law being of the offense). By definition, the most important element of this *trias*[205] is *Criminal Law*, mostly because of greatness of danger, which characterizes criminal acts. Committers of those offenses, in majority of states, can only be law responsible physical persons[206], whereas in Anglo-Saxon legislatures also can be artificial persons, as well as in the small number of relatively new criminal codes of European (continental) states[207].

[205] L. *trias* – trio.
[206] For example, in German Criminal Code, of the year 1875, amended at the Year 1994. See original text: Strafgesetzbuch Der Bundesrepublik Deutschland,Verfassungsorganen des Bundes vom 11. August 1999 (BGBl. I S. 1818).
[207] See, for exemple, Article 121-2 of the Cod Pénal du 5 Février 1994 (French Penal Code).

Economy violations and *infringements* can commit not only physical, but artificial (legal) persons also. These two kinds of incriminated behaviors are mutually different on the base of three elements:

- *Economy violations* are offenses expressed by economic activities of subjects[208],
- *Infringements* can be committed with any other kind of act -- economical or uneconomical,
- Also, with the *heaviness* of expressed *jeopardize*, or *violation* of protected good, which is, generally, with the infringements less incomparable.

Contact point of *Ecology Law* and *Penal Law* is found in fact that by the norms of *Penal Law*[209] is given protection to the eco values -- by incrimination of the behavior opposite to the material norms of ecological importance and/or character[210]. This means that such behavior is incriminated and sanctioned by the positive legal act. These *Ecology Law* norms are appearing as a material-law base necessary to declare all three kinds of delicts:

- Criminal acts,
- Economy violations, and
- Infringements,

[208] Activities that, also, can be of environmental importance. See, for example: South Australia's Environment Protection Act of 1993, text which incriminate, with:
Section 79[1] criminal liability for "serious environmental harm," and
Section 80[1], which incriminate criminal liability for "material environmental harm," activities of man, as well as of artificial persons, also.
[209] As a branch of some observed positive legislation.
[210] On this theme se closer: Joldzic, V. (1995a), pp 20. - 24.

dedicated for the protection of eco values[211], but, at the same time, comprehensibly, the largest numbers of those rules are, in many states, also of utmost importance for health, body integrity, and man's life protection.

4.7. Conclusions about the Mutual Relation and Boundaries of Ecology Law and the Other Law Branches

In our, with this text expressed, scientific efforts at the field of *Ecology* (*Environmental*) *Law* development and applying we have pointed at mutual relations of the *Ecology Law* and the other law branches, relations at the same time of key interest for *Ecology* (*Environmental*) *Law* branch and the other connected law and legal branches. We had done efforts to point at:

First place, law-logical differences between observed law and legal disciplines, and at

The second place their connections and mutual impacts.

Of course we have not treated all, but only branches of utmost interest for our field of researching. Such work produced some results – our conclusions. What we, among in text already remarked, can conclude summarily?

Primary, it is evident that *Ecology Law* efforts, efforts for developing at the level of international community and law science, as well at the level of states, obviously are not possible out of constitutional boundaries.

If we preview environmental problems through time, it is obvious that relation between *Ecology Law* and the *International Public Law* is in process of constant feedback enhancing.

[211] Fact which is clearly visible from: Australian Environment Protection and Biodiversity Conservation Act (1999), legislative text that give legal basement for incriminations in positive Criminal Code Act 1995 (1995).

Whichever simple research effort we can do, in any state, as well as at the level of international community, relations between the *Ecology Law* branch and the *Administrative Law* branch are unavoidable and of utmost interest.

Having in mind that *Ecology Law* forms protective law (legal) elements of utmost importance for environmental values and rights, it is obvious that relations between *Ecology Law* and *Civil Law* have special importance. *Civil Law* threats worth. This means anything that can be measured through money. Any environmental value also has worth that can be measured at the same way. From this reason also any environmental damage can be measured, inside state borders, but also outside and at the international spaces.

If we accept previous four conclusions it is clear that all treated and explained need some kind of efficient guaranty. Such guaranty is adequate *Penal Law*, especially *Criminal law* and legislature, as we previously explained.

Of course, our researching do not produce complete picture of all the possible interconnections, differences and boundaries between *Ecology Law* and the other law branches, but the author has state that presented are of utmost importance.

CHAPTER 5

CONNECTIONS BETWEEN CONSTITUTIONAL LAW AND INTERNATIONAL LAW ELEMENTS AND THEIR SIGNIFICANCE FOR ECOLOGY LAW

5.1. Introductory Notes

At the previous pages, explaining our process of the *Ecology Law* researching, we had annotated, laconically, only the relations and mutual connections between *Constitutional Law* and *International Public Law* branches, from the one side, and the *Ecology (Environmental) Law* from the other side. Not in detail their roles, hence their legislative elements also, of importance for *Ecology Law*, especially the *Ecology Law* at the terrains of concrete sovereign states. Of course, if we research *Ecology Law* as science and practical discipline it is of utmost importance to recognize main elements and ways of this two law science disciplines establishing and realizing, which also include their legal elements of importance for modern states and their processes of *Ecology Law* development at national levels. From this reason we shall tray to analyze and explain, in brief, most important parts that elaborate some crucial

questions from *Constitutional Law* and *International Public Law* connected with the *Ecology Law*, its developing and practical applying. And we also emphasize the fact that every legislation when regulate desirable: values, rights, obligations and duties, have utmost need to guaranty respecting of such legislative constructions, which is feasible by penal norms that treat disrespecting of such previously mentioned norms. Of course, law logically also is desirable that such guaranties posses fundaments in constitutions as supreme laws of states.

In next logical sections of this chapter we shall present some of our knowledge connected with the elements of subject. In this process we:

1. Shall start from the general International Law elements of importance for development of the Ecology Law,
2. Continuing with the analysis toward attitude and rules that constitutions provide by wide bases as well as narrowly formed and aimed requests - which means bases and obligations for the latter precise legislative regulating and guarantying by laws.

Contemplating about development of *Ecology Law*, we have to realize that matter of *ecos* protection enriches through years, on *International Law level*. As Hunter and team observed over twenty years ago, "more than 800 bilateral and multilateral contracts contain *rules* that are *in connection* with one or more *aspects of the environment*[212]". It is obvious that this number is, in this moment, far bigger, going from sub regional, via regional to global ecological questions[213]. Just from the reason of widely, even globally, expressed importance of the elements of

[212] Hunter, D., Sommer, J. and Vaughan, S. (1994), p 2.

[213] As we can see from the UNEP, IUCN and ECOLEX libraries, mentioned number is in process of constant grooving. IUCN, at the year 2008, published number of 1254 international treaties of environmental importance (IUCN Treaties - Short Display) and ECOLEX, at the year 2016, number of 2170 international treaties that are of: a.) the environmental importance, or b.) of environmental importance parallel to their main importance.

environment, as well as the elements of its legal protection. There is necessity of noticing and grouping *these legal elements*, as well as *general principles* of *International Law*[214], in order to fulfill our task: Forming the draft of the *Ecology Law* subject in a proper way. This, in particular, due to the fact that the examples of authors' national states: former Yugoslavia and actual Republic of Serbia, signed over 140, and ratified more than 90 conventions of importance for the *Ecology Law* area. By the procedures of their official confirmation ex-Yugoslavia and Republic of Serbia formally included into positive, ecologically oriented, legislature (legislature in effect). Moreover, constructional parts that, within their place and importance, which they take and express in positive law, do not lag behind the norms formed by Parliament and Republic and State Government, but already influenced at bringing of these norms[215]. Thereby, our task is, while forming the *Ecology Law General Object* structure scheme, to approach that task multi-disciplinary, to express those elements of *International Law* that are necessary for achieving aimed goal. In this process we have to start from the interests of state where we belong.

International Public Law represents scientific law branch and group of legal rules, which main -- general object is *mutual relation*, before all, of states[216], as subjects of law, with their will, furthermore, sovereignty[217]. Mentioned mutual relation, established at the international level, at the same time is object of *International Public Law* study, and regulation

[214] Which we treat through special logical part of this book that treats Ecology Law Principles.

[215] See also, for example, not only legislative products of Yugoslavia and Serbia, but also of the Federal Republic of Germany, and so cold "Lands" (federal parts of Germany), as well as the Canadian, or Australian, legislation too.

[216] As Anzillotti (1929) emphasize through his Cours de Droit International (Course of the International Law).

[217] See, closely, at: Enciklopedija prava (Encyclopedia of Law), p 794, as well at the Avramov, S. and Kreća, M.: Međunarodno javno pravo (International Public Law), pp 1-8.

with collectively expressed will. As such, it owns several branches and their sections, from which, almost everyone, directly, or indirectly, deals with some of the problems of influence on the environment.

Entering the *International Law relations matter*, originated on the environment, we should always have in our minds, and insist upon the fact, that it is in process of developing through practice of international contracts' conclusions, practice established on the base of general law rules' application, and on the basis of massively adopted new rules, formed by concerned law texts. In the other words, sources of *International Law* lay in common will of sovereign states, and sources, in formal sense, are concrete law acts through which law rules are manifested. In law science and legislature, in Serbia too, is adopted principle that the hierarchical relation of sources has to be formed on axiom: *Lex specialis derogat legi generali.* It is important for us to insist upon this axiom, because of one number of specific conventions and their specific connotations, with regard that many conventions, by their nature, are *lex specialis*, but they are not *lex specialis* of, for example, Serbian, or anyone's, constitution, nor conventions are considered as such in law theory. Thereby, texts of concerned conventions substitutes, by ratification, a number of previously brought conventions as well as domestic laws, but they never can oppose the Constitution!

5.2. International Contracts as Constituent Elements Of the Ecology Law

The term: International contract, by documents whose publisher is the United Nations Commission on International Law[218], marks different kinds of attained agreements of will: agreements, conventions, pacts,

[218] See: United Nations Documentation - Research Guide.

protocols, *et cetera*. Our personal opinion and latitude is that we can separate them in two large groups, by their contents:

1. Legislative ones -- which are used for general law rules forming, with the aim to create norms that would regulate, on permanent and uniform way, international relations, as well as the obligations for states to incorporate such rules in national legislative systems[219], and

2. Contractual ones -- which regulate some concrete case of law relation. These are mostly contracts between two, seldom three subjects of International Law, which does not bound anyone, as such, except the states that signed it[220].

Entering deeper into study work, we have to bear on mind that international contracts can be classified as well accordingly to the number of analyzed contractual acts, as:

- Bilateral,
- Three lateral, and
- Multilateral.

And also, accordingly to their space range, as:

- General,
- Regional, and
- Sub regional.

[219] From the reason of their characteristic, that such contracts: a.) regulate, generally, some law questions, and b.) establish duties for states to incorporate internationally formed norms, as the elements of national legislatures,
we have constructed the idea: *Legislative Conventions*. Such conventions are, for example: International Labor Office (ILO) White Lead (Painting) Convention (1921), Danube Convention (1948), Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal (1989), and the others.

[220] Yugoslavia, as sovereign state, as well as her constitutive republics, Serbia between them, had contracted such agreements.

Contracts can be also separated mutually by the time of their forming, as:

- Previous, and
- Latter, or, at the other way of speaking: successive.

Beside time condition, we need also one logical condition for this: That observed contracts refer to the same subject matter. Its differentiation, in *Ecology Law* matter, is of great practical importance, due to the simple reason. If the same contractual parts sign later contract, then, by the *lex posterior* rule, the latter one replaces previous contract. If the latter one has not been signed by all the contractual sides, which signed the previous contract, rule is that for the states which didn't signed the latter contract are in effect norms of the previous one. Reason is simple: Necessity to have legally regulated all possible areas of relations. This we must keep in mind when looking at conventions, protecting by them interests of states, which has signed and ratified all those international contracts, making them, at such way, the constructive elements of national *Ecology Law* and positive legislature.

Analyzing international contracts, possibility of their signing and setting their contents and range, we should respect the rule that between international contracts and the Charter of the United Nations[221] exist clear hierarchical relationship, defined by the Article 103 of the Charter. By it, when the member of the UN signs international treaty, its parts cannot be in collision with regulations of the Charter. Precisely, obligations that originate from the Charter are above the ones précised by the any other international treaty, so in a case of their collision, formally are in effect regulations (norms) of the UN Charter. In another word, by adopting

[221] The Charter of the United Nations was signed on 26 June 1945, in San Francisco, at the conclusion of the United Nations Conference on International Organization, and came into force on 24 October 1945.

Article 103 of the Charter, into *Ecology Law* has been included principle of respecting the *normative-hierarchy method* in the *Ecology Law* developing and application[222]. This we have to keep in mind when eventually officially interpret a contract that we have ratified, as well as in our future engagement in signing international treaties, which will deal with the *ecos*.

In development of positive *Ecology Law* -- through evaluating legislative agreements, we must not forget the fact that is the principle of *International Law* that states, entering by their own free will into international relationships, by respecting freedom of establishing law will, inside the already established rules, if they wish, can point on *reserves* on the offered treaty. This because of simple reason that all offered elements of a legislative agreement may not be adequate for some state, but only some parts of such document. That's why it is satisfying to include only them into positive *Ecology Law*. *Ecology Law* of our example: Serbia, also possess, for this attempt, adequate law basis in the norms inherited of Yugoslav legislature, as well as in Serbian national legislature, developed through decades.

In law inherited from Yugoslavia, starting from the Article 19 of the Vienna Convention on the Contractual Law, by the term "reserves" we consider formal one-side statements by which a state dissociates itself from some regulation of the contract, and by which this part of the contract is:

- Not obliging at all, or
- Has got a partial meaning.

[222] Thus we point at the fact that is often forgotten that *principle of normative-hierarchy building* of legislations, this also means of the Ecology Law developing, is unconditional, no matter that authors around the World do not write about it.

We emphasize that institute *reserve* should be differentiated from *conditionally accepted agreement*.

When a state accepts agreement under some *conditions*, one contracting side conditions its acceptance in a whole, without changing, but with some precisely defined condition(s)[223] for the other side(s) of the agreement.

When we speak about the contracts that deal with the *ecos*, a lot of states have *reserves*, directly and mostly towards neighboring subjects, conditioning agreements with them, mostly, by their acceptance of some positive move toward the *ecos*. We think that this way of *Ecology Law* doing is correct, for Republic of Serbia also. This means that "reserves" should be precisely defined. Reserves cannot be put on only if we are dealing with documents that explicitly block up the possibility of reserves usage. Then a state has opportunity:

- To engage; or
- Not to engage into such international contract.

Other options do not exist. We shall also to have in mind the rule, that if "reserves" are not established, contract, with its signing, does not automatically come into power. For this has to be fulfilled one more condition – ratifying. When we talk about conventions and their annexes, concerning the ecology as subject matter, our example - Serbia, as many other states, until today, has not officially authorized anyone to act at such way. Beside the official representatives have signed more than 150 conventions concerning *Ecology Law* matter, all of them have not become a part of our positive *Ecology Law*. Reason is simple: Only some ninety of this number had been ratified. This is frequently out of sight. We must

[223] See: Vienna Convention on the Contractual Law (1969), Article 19.

have in mind that, in the *Ecology Law* developing process, especially at the level of states, principle of ratification has important place.

In accordance to the generally accepted principles of *International Public Law*, state has a sovereign right to reject ratification, even if their representatives had signed the agreement. The institute of ratification in modern state - law system is based on the idea of democratic creation of government, especially developed, when we are talking about *International Public Law*, inside normative theory[224]. Essence of the idea is that contract has not to be ratified by the same persons, which have signed the international agreement, but by the other persons, obliged to *demos*[225], according to the principle of legislative election of the state - signer. Right to ratify posses:

- Parliaments, *in principium*,
- Governments,
- Government representatives, or
- Representatives officially authorized by the parliament.

In Ex-Yugoslavia, and Serbia, as in number of other states, until nowadays, based upon different laws of ratification, were in use first two ways of ratification, even at the same time, to the year 1978 and the Law on the Signing and Committing of the International Agreements putting in force[226]. By this way the texts that had been ratified, had became not only legal elements of Yugoslav and Serbian State' positive legislature, but they had legitimately came to this status, which gives them full importance in our actual legal system.

[224] See: Kelsen, H (1952), p. 314.
[225] Old Greek: people.
[226] See: Zakon o zaključivanju i izvršavanju međunarodnih ugovora (Law on the Signing and Committing of the International Agreements), from the year 1978.

Aiming to further development of *Ecology Law*, we are obliged to warn on the possible obstacles, which are forming at the field of international relations. It is clear to us that in development of *International Public Law* there is a new chapter, opened with appearance of conventions, as the one that deals with the preservation of the ozone layer[227], which had been dictated, and obligations by them defined (upon the threat), to the states that have not ratified, even signed, them. We further think that the most developed states will drive to create more of such conventions, so we should have to take this fact into consideration in our international legal activities. These states even give theoretical justification to their approach by the words of their lawyers. One of the most famous is American lawyer Jessup[228]. In his papers[229] he had clearly presented the idea that exists only one universal and trans-national law, which regulates relations between physical and artificial persons (including in these mass states and the international organizations), *trans-national law* that all the aspects of relations. This, we are free to conclude, also includes and threats all the aspects of *Ecology-Law* relations. Jessup's view today is widely acknowledged among American theoreticians and administrators, which is clearly visible from the American initiatives expressed in process of the Vienna Convention for the Protection of the Ozone Layer formulating. On this level of development of the *International Public Law*, these initiatives can be understood only as attempts to legalize the theories of partial sovereignty. Serbian attitude to such theory is negative. Reason is clear. Sovereignty, in reality, for some states, is bounded by the most developed states. In

[227] See: Zakon o ratifikaciji Bečke konvencije o zaštiti ozonskog omotača [(Law on the Ratification of the Vienna Convention for the Protection of the Ozone Layer (1985)], from the year 1990.
[228] See: Jessup (1956).
[229] See: Papers of Philip C. Jessup - A Register of Philip C. Jessup Papers in the Library of Congress, Manuscript Division (2003).

reality those strong countries still stay as subjects with free wills. We think that further comments are not needed.

This is in collision with the principles of normative theory, which has been started by Kelsen, and with his monistic teachings, today widely accepted by many states. Norms of sovereign states for Kelsen are under *International Law*, as a law of higher level, and are "included in them'', starting from contracts and common law, established by free will of states, not the dictate[230].

Monism, as it has been considered by Kelsen, is based on pyramidal hierarchy of norms -- logical hierarchy by which a lot of norms of sovereign states, starting from the lowest legal constructions, are surpassed by norms of higher hierarchical level (less number of them), and so on to the top, which is made by the norms of the *International Law*. Jessup, at the other side, think differently: That exist only one and trans-national law that regulates relations between physical, as well as the artificial persons, as subjects, including states and international organizations[231].

Kelsen's teaching exists in positive law of many states, Republic of Serbia between them. In all those states ratification, as an act of expressing free will of the state towards international community, is obligated. Without the act of ratification the signed text cannot be part of positive legislation. Even if regulates some aspects of relations concerning natural surroundings. By, from us accepted, dualistic approach[232], states are obliged by the norms (rules) of *International Law*, because they have, as sovereign states, accepted it, and by this act of acceptance they have

[230] Kelsen Hans, mentioned book, p 312.
[231] See: Jessup (1956) Transnational Law.
[232] Which can be clearly seen in the Article 210 of the ex S.F.R.J. State Constitution, from the year 1974, as well as in the Constitution of the Federal Republic of Yugoslavia, Article 16.

included them into the sum of their positive legislatures, which means the *Ecology Law* norms also[233]. Serbian Constitution, as many others, has clearly inaugurated possibility of ratification[234]. State, by the act of ratification, leads itself to partial auto limitation of sovereignty. To the auto limitation which always can be abandoned, by legitimate will[235]. For us the realization of this moment and its incorporating into positive *Ecology Law* is of great importance. With this not only Serbia clearly reject monistic interpretations of the *International Law*, and agreements based on such rules, which means that for our State and legal system, as for the other modern states, norms of the *International Law* texts are of legislative importance only if they are from ratified conventions[236], which also means that are not in collision with Constitution[237], and are of legislative importance only from the moment that sovereign will of State this accepts. Such approach is not present only in Serbian law theory but in majority of law texts published at this theme around the World.

Great importance for us is to emphasize that this, at the same time normative and dualistic comprehension, have been built into the Vienna Convention on Contractual Law[238] basic document of modern *International Public Law* , which regulates basic rules (principles) of international contracts concluding, their validity and implementation, which is of importance at the area of the *Ecology Law* also. That is why we should look, through a separate part of the study, at its basic principles, having in mind

[233] See also Article 16 of the new Constitution of the Republic Serbia, text now in process of democratic reception.
[234] By Article 73 (7), inaugurating of this principle, by the Constitution, has to be differentiated from his regulating, that has to be done by Law on Ratification.
[235] See theory of auto limitation.
[236] This is clearly defined by the Constitution of the Federal Republic Yugoslavia, from the year 1992, Article 16, supra note 2.
[237] See last sentence of the Article 16, from the Republic of Serbia Constitution (Year 2006).
[238] Vienna Convention on the Contractual Law, Year 1969.

that modern states, Republic of Serbia between them, insist on their respecting.

In accordance to the Vienna Convention[239] international agreement is an agreement concluded between states, and confirmed in written form, in accordance to the International Law rules[240]. It can be created in different, by contract sides pointed forms, as:

- Contract,
- Protocol,
- Agreement,
- Convention, as well as
- Annex, pointed on some of the mentioned forms of documents.

The Convention in its text contains norms, which regulate:

1. Rules of the concrete convention concluding,
2. Going into effect of the convention,
3. Concluding the annexes and their going into effect,
4. Norms concerning the obeying the rules,
5. Application, and
6. Interpreting the norms from the text,
7. Possibilities for the changes of regulations of the document,
8. Legal invalidity,
9. Suspending, and
10. Stooping of the convention's application,

[239] Ratified by the SFR Yugoslavia at the year 1972.
[240] See Vienna Convention, Article 2, supra note 1a.

11. Depositors,
12. Reports concerning the convention;
13. Correction and their including in the text, as well as
14. Registration of the convention.

As we can see from the listed elements, conventions are formally made, legislative international agreements, which constitute *general rules* applied for all states, on condition that they are lawfully accepted. Their law-fullness is conditioned by two elements:

1. The regulations of the Vienna Convention', and
2. The rules that regulate the observing matter, of the signer (joiner) state law system.

When we talk about the *Ecology Law* of any modern state, not only Serbia, it is obvious that these obligated structural elements of conventions, are of great importance for positive, ecologically oriented legislation (legislation in effect). From the stated list it is already clear that rules of:

- Getting into power,
- Respecting, and
- Possible changes of the convention,

posses direct influence on the:

- Structure, and
- Contents of the *Ecology Law* norms.
- Also at the rules about changes and suspending, because with them, questions of restructuring the national ecological legislations, are clearly regulated, in the case of the abandoning from the convention or the convention's completely suspending.

Thinking about development of the *Ecology Law*, from the aspect of Serbia also, it is interesting to explain some other unavoidable moments, which are tied to *International Law*.

For all categories of international treaties, which indirectly or directly treat the ecology matter, common trait is that they represent constructing elements of the *Public International Law*. That is because with them international relations are regulated. With their multiplication, and treatment of various relations, they helped to develop and create new branches of *International Law*: Law on the Sea, International Law on Biological Resources' Using, Law on the Waters[241], Protection of Air[242], Flora and Fauna Protection, *et cetera*.

Having in mind, that through the years the number of international agreements and conventions that treat, as their only or main subject matter, values of environmental importance (air, water, soil, flora, fauna, mineral wealth, *et cetera*), as well as the relations with them or about them, multiplies, it is easy to find for them the common denominator: That grooving number of such documents of the *International Law* treat as their basic elements environmental values and with them connected legal relations. With the reason that in regulation of these relations same law methods and principles are used, clearly, it is present new branch of *International Public Law*, in constant developing process: *International*

[241] See: Convention on Fishing - London (1964), Barcelona Convention for the Protection of the Mediterranean Sea against Pollution, (February 16th 1976), United Nations Convention on the Law of the Sea (December 10th 1982), and the others.

[242] About the problems of the air protection see closer
Joldzic (1995c):
1. Treaty Banning Nuclear Weapon Tests in the Atmosphere, in Outer Space and under Water, p 72,
2. Convention on Long-range Transboundary Air Pollution (1979), pp 61-63,
3. Vienna Convention for the Protection of the Ozone Layer, pp 64-65, as well as
Convention on Environmental Impact Assessment in a Transboundary Context, Year 1991.

Ecology (Environmental) Law[243].Or, as is more common to say: *International Environmental Law*. It is further quite obvious that its developing is in accordance to the principles that exist in all the *International Public Law* branches. Looking at it we can see two theoretical and with them connected practical approaches: monistic and dualistic.

Subjects of the *International Public Law*, and at the same time *International Ecology Law*, are, above all, states. That is why they are the first to be responsible for not respecting the obligations that they have taken. This means that their obligation is to fulfill the tasks, which they have accepted by signing and ratifying the international documents. If this question is not regulated by the convention, from general principles it comes that a state that ratified some convention regulates questions that are tied to this:

- State nominates bodies (organs) that take care at what the convention is respected, also
- Establishes the method of their functioning, as well as
- Regulates cooperation between such state organs.

It also means that in these questions there cannot be present law vacuum. In reality this vacuum exists in many states at the case of many ratified conventions, also at the terrain of conventions that Yugoslavia had ratified and Serbia had inherited, due to constant democratic transitions of states and with transitions connected changes of competences, by acts of the governments (federal and republic). We have to bear in mind this shortage of positive *ecologically oriented legislation* in any modern state

[243] As any reader can see, perception of the Environmental Law as the Ecology Law is for many years present in law science. For example se the name of the periodical scientific publication: *Ecology Law Quarterly*, of the University of California Berkeley School of Law.

and to correct it whenever is necessary. This will not be an easy task, because ratified conventions[244] have been applied on the majority of the aspects of *Ecology Law* relations, concerning many environmental well-beings.

The second category, the conventions in which there it is precisely regulated who in the state - signer be obliged to set norms of the conventions into life, is in the positive *Ecology Law* (legislature) of modern states, Serbia also, quite rare. In addition, no matter the rules of these texts seem quite rigid, they still give a degree of freedom. The point is that these conventions, when they say about the states - signers, make a difference between unitary and federal, as well as co federal states, and precisely regulate which norms (obligations) have to be in competence of central authority of the state. Any convention, as we are free to say, does not regulate the question: Which organ of the central authority will be obligated for some duties defined by the convention? This question is in competence of the state -- signer. In many states concrete law on ratification of some convention treats this question[245]. At the other word to say, obligation of the complex (federal or co-federal) state, proclaimed trough the rules of such convention, is: To give prompt information to the depositor: which organ(s) of the central authority will be obligated on the base of the convention's ratifying, to treat concrete convention's matter. Although Yugoslavia had ratified the Vienna Convention on Contractual Law and the other conventions connected with this question, we have to emphasize that in the Yugoslav Law on Signing and Performing the International Agreements[246] this question had not been regulated in detail. This represents an admission in the construction of positive legislation. We think that it has to be corrected in short time, which is Serbian urgent

[244] See closely: Joldzic (1994a), pp 137-170, as well as Joldzic (1994b), pp 27- 76, and pp 37-38, also List of Conventions Ratified by Yugoslavia (1994c).
[245] Compare, for example, legislation of Australia with the ex-Yugoslav legislation.
[246] Law on Signing and Performing the International Agreements (1978).

interest. This is important for one simple reason, because Yugoslavia has ratified an number of international documents of this category, more precisely: Conventions that treat ecology matter, but Republic of Serbia, as successor, has not yet finished establishing a sum of norms that will enable such conventions, to be real part of positive and applicable legislature.

5.3. Constitutional Law Fundaments of The Ecology Law in Modern States

5.3.1. Introduction

If we wish to have really good practice at any field of human relationship toward environment first prerequisite is to constantly develop legality, of course based at legitimacy. But for such approach, must be, at first place, at qualitative way, formed basic rightful condition: Constitution(s), as ultimate condition for developing of general legal constructions (of *lex generally* category) and specific legislations (of *lex specialis* category) adequate for reviving the good practice of human relationship with the environment.

Developing of constitutional fundaments is basic prerequisite and fundament for adequate human relationship toward all the elements of environment as well as mutual human relationship in connection with the rights, obligations, duties and responsibilities of importance not only to humans but the elements of nature, especially, but not only, the elements of narrower and wider environment of human societies. Starting from such principal benchmarks we have oriented our researching at more than 30 relevant constitutions.

We need to be aware of fact that in contemporary World, in which Europe is not the exception, loads on nature and especially human environments are in constant processes of growing and multiplying by type. This phenomenon requires adequate reactions of societies, at first

place states. If we want such reactions previously have to be fulfilled some prerequisites. Of course, at first place is building of qualitative constitutional fundaments necessary for such protection, which can be realized only through respect and application of constitutional-legal elements dedicated to such ecologically oriented task. Or to say at another way, constitutions have to posses norms by which:

1. Establish human right on healthy environment, but also
2. Define rights of artificial persons on the environmental elements using, this means: using of resources and parts of ambient,
3. Build adequate state apparatus, institutions which: Obligate, accredit and capacitate for such ecologically but also anthropocentrically oriented tasks,
4. Regulate rights, duties and obligations of all the elements of state (administrative) apparatus, but also,
5. Establish various: Rights, obligations, duties and responsibilities for all subjects, physical as well as artificial persons, of importance for the elements of environment, thus
6. Establish the elements of *Penal Law* systems by which guarantee respecting and applying the elements of legislatures, starting from basic laws (constitutions), through the elements that are directly and exclusively oriented at the questions of ecological importance, to the elements of legislatures that indirectly provide support to the values and relations treated by *Ecology Law* and legislatures, for example regulating fields of: building, connections, mining, ionizing radiation, traffic, energetic, *et cetera*.

If constitutions do not explicitly posses previously discussed elements clearly oriented at mentioned tasks, it is clear that have to possess formal elements – norms formed for some other purposes but which also can be applied at such ecologically oriented and previously mentioned tasks.

Having in mind basic task of this part of our text: Perception of constitutional fundaments necessary for the protection of environment it is necessary to deeper perceive:

1. What constitutions really establish and protect?
2. At what manner?
3. By which way?

What constitutions, at such a way, really provide at the fields of establishing and protection of rights, obligations, duties and responsibilities of importance for the matter of our researching? This, especially having in mind that ecological problems are constantly grooving at the local, regional, continental as well as global level. We shall try to answer at the questions, although, logically, is not possible to form to the end distilled and separated answers from the simple reason of mutual connections and interactions of observed mass of problems.

5.3.2. Fundamental Roles and Characteristics of Modern Constitution

Respecting the methodology explained at the beginning of this book, as well the hierarchy and order of researching activities, we have directed our attention at the constitutions as deepest fundaments for the *Ecology Law* forming and constant developing. This from the simple reason, as has been explained[247], that constitutions are characterized by following elements:

1. Constitutions have power to establish legislative systems,
2. Constitutions are stabile construction, or we expect this,

[247] Raz, J. (1998), pp 152-193.

3. Constitutions are, mainly, written documents, although some as the Constitution of Great Britain, are not,
4. Constitution is the supreme law of every state,
5. Constitution have to be rightful, this also means really applicable in the justice system,
6. Constitutions cannot be easily changed as all the other laws of states, and, certainly
7. Every constitution represents actual ideology, which also means dominant policy.

Considering all the constitutional characteristics as well as the fact that they have been formed through long and different times, it is clear that we cannot understand them by simple reading. It is necessary to do systematic analyzes of constitutions.

5.3.3. Methodological Access

If we want to adequately research all the elements necessary to form adequate answers at the questions formed by the research topics, it is clear that, at first place, we have to putt efforts at the field of methodological apparatus modeling, forming such apparatus correspondingly to the general topic of this scientific researching.

Answer at the first logical question: Which, between numerous constitutions indeed treat and protect what is connected with the topic of or work? Is this obtained only by passage through seven methodological phases:

1. Forming of real topic of this researching, which had been done at previous pages of book,
2. Raw materials collecting, which also had been done,

3. Classification of raw materials, also previously achieved phase,
4. Law-lexical analyze,
5. Law-logical analyze, then
6. Normative-hierarchical analyze, and
7. Comparative analyze of material, which include:
   - Twenty-four constitutions of the European Union members, then constitutions of the neutral European states, as well as from many African states, but also of Australia, Canada, Japan, Peoples Republic of China, USA, and some Latin America states (for example of Argentina and Brazil), and
   - Complex legislatures of mentioned states, including the elements of their penal legislatures that will be discussed later in separate part of this book?

5.3.4. Fundamental Roles and Characteristics of Modern Constitution

Respecting the methodology explained, as well the hierarchy and order of researching activities, we have directed our attention at the constitutions as deepest fundaments for the *Ecology Law* forming and constant developing. This from the simple reason, as has been explained[248], that constitutions are characterized by following elements:

1. Constitutions have power to establish legislative systems,
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[248] Raz, Joseph (1998) pp 152-193.

4. Constitution is the supreme law of every state,
5. Constitution have to be rightful, this also means really applicable in the justice system,
6. Constitutions cannot be easily changed as all the other laws of states, and, certainly
7. Every constitution represents actual ideology, which also means dominant policy.

As we had already said at previous pages, considering all the constitutional characteristics as well as the fact that they have been formed through long and different times it is clear that is necessary to do their systematic analyze, also perceiving systematic that every constitution possess. This means that is necessary to do deep analyze of the elements which every constitution posses apart, analyze of the elements that attract our attention, as well as to do comparing of all this elements. By such way of doing we can see and understand logical connections at the micro level, level of the norms but not jet at constitutions as entities, through so-called micro-comparison[249]. In this process, having in mind that in the reality everything is in the process of developing on the base of challenges and answers, constitutions are through the time under constant pressures to be adapted and, if it is necessary, upgraded or even changed by the new ones.

5.3.5. Right on Healthy Environment Establishing

Analyze of European states constitutions, from oldest to newest, indicates that constitutionally established human rights protection is kind of right that evolves through the time. Creators of modern constitutions

[249] Which elements have to be observed through the process of micro comparisons depend of cultural concepts of the societies that form constitutions that we are comparing. See more at: Vergottini (1993), p 64 and Häberle (1989).

often clearly and directly refer on the actual and accepted *Public International Law* elements. To be more precise: Their principles and rules, at first place of the Universal Declaration on Human Rights[250]:

- As, for example, generally defines the Constitution of the Republic of Serbia[251], and
- Laconically determines the Constitution of the Italian Republic[252], or
- Practically directly including the elements of the Universal Declaration on Human Rights[253], but also
- Explicitly establishing Universal Declaration on Human rights respecting[254].

What Universal Declaration on Human Rights really provide us at the field of efforts for the ecological values and rights establishing, developing and protection? Declaration at which new modern and amended constitutions point:

- By principal relaying on generally accepted norms of the *Public International Law*,
- Directly and explicitly, or
- Clearly, almost literarily, implementing the elements of this Declaration into its corpus?

[250] The Universal Declaration of Human Rights (1948).
[251] From the reason of comparing see: Article 18, paragraph 2, from the Constitution of the Republic of Serbia (Year 2006) and Article 9, paragraph 1, from the Constitution of the Federal Republic of Austria.
[252] As the Article 2 of the Constitution of the Italian Republic (La Costituzione della Repubblica Italiana), Year 1947.
[253] See, for example, the elements of the: Ustav Republike Hrvatske - pročišćeni tekst (Constitution of the Republic of Croatia, Consolidated Text) (2010), Art. 3 and Constitution of the Republic of Poland (1997), Articles: 5, 30 and 31.
[254] For example see Article 10 of the Constitución Española (Spanish Constitution) of the Year 1978.

If we point attention at the original text of mentioned Declaration from the Year 1948 then, by the: a.) Textual, b.) Grammatical, as well as c.) Law-logical analyze, we can do separation – extraction of the elements that are of logical importance for the *Ecology Law* also, which means at the same time:

1. The International Ecology Law as well as
2. The Ecology Law at the level of states that ratified Universal Declaration of Human Rights (really more than half of sovereign states), by which act such states included this declaration into their positive legislatures.

Analyze at the start explicitly points at the fact that the Article 1 of the Declaration is of utmost importance for the processes of fundaments establishing, thus the constitutional fundaments also, for the adequate access to the problem that we are researching, from the simple reason that emphasizes the fact that all human beings are born free and equal in dignity and rights. This means not only in the rights on: 1. Life, 2. Free movements, 3. Settlement, 4. Religious beliefs, 5. National designations, but also at the 6. Right on healthy environment, as the prerequisite for healthy life, without which is not possible to realize right decidedly established by the Article 25 which had literally prescribed that "Everyone has the right to a standard of living adequate for the health and well being of himself and of his family." Of course this is not possible to realize without healthy working and living environments. This also means that nobody has any right to deteriorate them and, accordingly, that states, as guarantors of human rights, obliged to fight against such, in essence, criminal phenomenon.

With the facts mentioned in previous passage is strongly connected logic of the Article 5, which enacts that nobody has not be exposed to un-human or degrading treatment, degrading neither by: a.) type, or b.) measure. Certainly, such treatment always exists when some of ecological

parameters of living are under heavy pressures and/or injuries. The parameters of which a solid number is protected by the text of Convention of Genocide[255], that incriminate every doing that aggravate human living conditions, and, in harder expressed forms, human survival, conditions such are:

- Food production,
- Production or possessing drinking waters as well as water for other human needs,
- Making it difficult or destroying the conditions for housing, which lead to harder demographic multiplying and/ or survival of observed human society[256].

When we bear in mind all those elements it is apparent that Article 5 of the Universal Declaration on Human Rights is this fundamental norm, at the same tame principle, of utmost importance for the *Ecology* (*Environmental*) *Law* also, element that provides protection to the human, this means ecologically adequate, conditions for life[257].

Article 7 of the Universal Declaration on Human Rights prescribe that "All are equal before the law". If we have in mind globally accepted *Principle of Equal Access to Legal Proceedings*[258] it is clear that the norm

[255] Convention on the Prevention and Punishment of the Crime of Genocide (1948).

[256] As is precisely defined by the Article II, under (a), (b), (c) and (d) of observed Convention and is precisely implemented, for example, into Crimes and Criminal Procedure of the US, Chapter 50A, Section 1091, under (a), points: (1) – (5).

[257] To this Article 5 have to be accomplished efforts of law scientist to formulate Draft of the Article 31:
"Everyone has the right to clean and accessible water, adequate for the health and well-being of the individual and family, and no one shall be deprived of such access or quality due to individual economic circumstances".
See closer discussion of the Hickman, Leo (July 6th, 2009), Article 31: A Well-Spring of Human Rights; *The Guardian*, UK.

[258] See closer: Report of the United Nations Conference on the Human Environment, Declaration of the United Nations on the Human Environment (1972), Principle 21 and Principle 22.

from the Article 7 means that every of us, in the accessing to the administrative and/or judicial authority and opening necessary proceedings aimed to the protection of personal right(s) threatened or injured, also posses equal right on such protection of right on healthy life in healthy environment, protection which can be realized not only by authorized national state organs, but also at the level of foreign state if such threatening or injuries came from foreign state. This also means that any physical or artificial person which right is threatened or injured possess the right to be protected by the elements of *Penal Law* of national and of foreign legislatures.

Finally, we can notice that that observed Universal Declaration on Human Rights, by the Article 21, through paragraph 2, provides support to the previously mentioned, prescribing that everyone has the right of equal access to public service, which means also services of:

- The environmental protection, ,
- All kinds of inspectorates,
- Investigative authorities,
- Prosecutions, and
- Judiciary organs.

If such rights are qualitatively established and guarantied they are strong preventive factor against all the kinds of ecologically manifested, or of ecological importance, threatening or injuries.

5.3.6. From the Human Right on the Healthy Environment to the Right of Actual and Future Generations on the Healthy Environment

Establishing the right on adequate living environment, invocating on the elements of *International Law*, constitutions do not observe right on

the healthy environment only as a right of living human species[259] but treat this right as the right of living and future generations. This can be easily seen from the constitutions of: Germany (Art. 20a), Norway [(Art. 110b (1)], Poland [Art. 74 (1)], as well as from many other states. This also can be seen through at the same time rule and principle present in most of modern (or modernized) constitutions that adopt generally accepted rules of *International Law*[260]. This also automatically means the acceptance of the *Principle of Inter-Generations Equity in Rights and Responsibilities*, installed in the *International Law* by the Article 1 of the Stockholm Declaration. This principle literally proclaims that "Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being, and he bears a solemn responsibility to protect and improve the environment for present and future generations". From the moment of its proclaiming concerned principle has been implemented into many *International Law* documents. For example in:

- The Resolution on the Historical Responsibility of Nature for the Benefit of Present and Future Generations[261],
- Climate Change Convention[262],
- Rio Declaration[263], Principle 3, paragraph 5, literally that "The right to development must be fulfilled so as to equitable meet

[259] As do, for example: *Criminal Law*, *Family Law*, *Health Law*, *Intellectual Property Law*, *Labor Law*, *Personal Injury Law* and many other law branches.
[260] Many of them at simply and laconic way prescribe obligation to respect generally accepted rules of *International Law*. This is obvious, for example, from:
The Constitution of Austrian Republic, Article 9, Paragraph 1,
The Constitution of the Kingdom of the Netherlands, Article 90, and
The Constitution of the Republic of Portugal, Article 8, Paragraph 1.
[261] United Nations General Assembly Resolution on the Historical Responsibility of Nature for the Benefit of Present and Future Generations (1980)
[262] United Nation Framework Convention on Climate Change (1992).
[263] The Rio Declaration (1992).

developmental and environmental needs of present and future generations."

By the Rio Declaration, Principle 3, paragraph 5, general object of intergeneration equity in rights (and responsibilities) widened from some of the group objects at the *ecos* as total, in accordance with the Stockholm Declaration and compatible documents, at such a way institutionalizing the *Principle of Inter-Generations Equity in Rights and Responsibility* as global and as one of key principles of the *Ecology Law*. In the aim to confirmation explained we point at the fact that the Rio Declaration ratified more than 200 states, which automatically mentioned principle rise at the global level!

5.3.7. Appearance and Developing of the Relationships between Constitutions and the Protection of Environment

Forming of the formal law basis adequate for the appropriate practice of the environmental protection, in the World starts from national environmentally oriented politics and transforms into legislative politics oriented to the same goal. Furthermore, through the time outgrow into ideas and practices of the constitutional reconstructions pointed to the same aim of the protection of human life into healthy environment, as the highest act of ecological politics transforming into law and legislatures.

Although development of ecological policy of modern states last few decades is more than obvious, such uprising and transforming into ecologically oriented legislations and constitutions is not the same from state to state. Having in mind by the researching noticed differences, it is possible to classify actual constitutions. This possesses its significance from three reasons:

1. Because that by clearly defined norms determine actual and future legal ways for the protection of environmental values and rights, but also

2. Providing the respecting of obligations and responsibilities at the domestic territories of states, as well as of

3. Providing the respecting of principles formed at the level of international politics and especially rules formed at the level of International Law, which simply means: Developmental process of all the segments of *Ecology Law* and ecology oriented legislatures.

Just from this reasons we access to analyze of the manifested national ecological politics transforming into highest levels of legislatures: constitutions, this means their elements of ecological at the same time human importance. Of course, through same phases of our work, we focus attention at the terrains and legislative fields and processes of a number of states, not only at the Republic of Serbia reality.

Constitutions as basic laws of states are law science and practice logical products that require slow systematic and precise, but not often, forming and enacting. From this reason is understandable that many of constitutions had been formed many decades ago, into times that precede contemporary ecological (environmental) politics, law and legislations forming. From this reason such texts do not directly mention the protection of environment. Many of such old constitutional texts are products from XIX[264] or the start of XX century. Into those old states, possessors of such constitutions repealing on the environmentally oriented constitutional protection usually can achieve by really wide interpretation of constitutional principles and norms that are in essence pointed at some other, not at the ecological or environmental questions and/or problems, which means at some other object(s) of regulation. Such are, for example, relations regarding: woods, mining, use of

[264] For example, such constitutions are:
The Constitution of Kingdom of Norway, from the year 1814, but many times amended,
The Constitution of the Kingdom of the Netherlands, from the year 1815, amended at the year 1848 and significantly restructured at the year 1983 and again amended at the year 2002, and
Constitution of the Kingdom of Belgium, from the year 1831, but radically reconstructed at the years of 1993 (reconstruction of the Kingdom of Belgium into federal state) and 2003.

waters, traffic or something else. Such constitutions are, for example: Constitution of the Republic of Austria, French Constitution, and Kingdom of the Netherlands Constitution. Those basic laws had been formed from 40 to nearly 200 years ago. To them are law-logically similar many of non-European constitutions, for example of Australia[265], Argentina[266], Canada[267]…, really old constitutions formed in the times when the ecological problems had not been theme of political discussions and have not been formally treated, at legislative levels, at all. From such reason mentioned constitutions do not posses special chapters, nor even small number of norms, exclusively aimed for the environmental problems. The environmental protection in our days they provide indirectly, through wide explaining of their inherent principles and norms. Or such protection provide only partially, through their parts recently formed by their amendments[268].

Related to previously mentioned group are a number of constitutions, but of later dates, from non-European states, which not treat explicitly ecological problems and other problems connected by, or arising, from them. But legal treatments of such problems establish at much wider through regulating of areas such is, for example, mining. Or same elements that also and simultaneously express itself as the elements of environmental importance[269]. Such constitutions, indeed, make possibilities for legislatures to pay deeper attention on the solid number of such questions and to regulate

[265] The Commonwealth of Australia Constitution Act, Year 1900.
[266] Constitución de la Nación Argentina, 1856, many times amended. See more at: Onestini Maria, Abelardo Palos Claudio: *Argentina – 1.2. Legal framework – Constitutional framework*, pp 110. and 111.; in: *Environmental Crime, Sanctioning Strategies and Sustainable Development*, Publication No 50, UNICRI, (1993).
[267] The Constitution Act, 1867 (The British North America Act, 1867) Consolidated with amendments, An Act for the Union of Canada, Nova Scotia, and New Brunswick, and the Government (29th March, 1867). Constitution that belongs to the Anglo-Saxon law school more precisely to commonwealth; text that had been amended 19 times.
[268] Excellent example is The Constitution Act, 1867 (The British North America Act, 1867) 30 and 31 Victoria, c. 3. (Consolidated with amendments), Article 92A - Non-Renewable Natural Resources, Forestry Resources and Electrical Energy.
[269] Joldzic,V. (2007a), p 15.

observed and possible relationships in details, thus to form some kind of mosaics of legislations that in their totality do some of their primary non-ecological functions but also the another and parallel function of the environmental protection. Good example of such kind of constitution is Presidential Constitution of Nigeria[270], which, although do not use word "environment" nor possess chapter precisely aimed to it, by its constructional elements provide wide possibilities for purely ecological matters legal threatening, doing this with laws of *lex specialis* category strictly oriented at the ecological questions[271]. This means: rights, obligations, duties and responsibilities of ecological importance[272]. In all such legislations is strongly implemented idea on the responsibility of physical but not artificial person, principle that expands at the field of *Ecology Law* also. Idea and principle which are present into continental states of Germany, Spain, Italy… Or to say at another way, legislations of such states principally regulate that responsible in any kind of legal relations can be only physical but not the artificial persons. Such principle had been long time present at the level of Republic of Serbia legislation, but no more is[273].

Time and reality of more and more frequent and expanding ecological problems, massively and consciously caused by human doings as well as doings of artificial persons, wake up need for adequate social reactions. But such reactions are not possible without appropriate formal forming of the highest legal fundaments, which means: The elements of constitutions of ecological importance as well as of importance for subjects that are somehow related with them. This process is clearly visible at the terrain of European states. Precisely through development of constitutional

[270] Constitution of the Federal Republic of Nigeria, Year 1979.
[271] See: Joldzic, Vladan (2007a), pp 15-16, and Nwabueze, B.O. (1983).
[272] About this see also: Omobolaji Adevale: Nigeria, in: Environmental Crime, Sanctioning Strategies and Sustainable Development, p 340.
[273] About this see more at: Joldzic (1995a), p 130, and Zakon o krivičnoj odgovornosti pravnih lica (Law on artificial persons' responsibilities for criminal offences (2008).

fundaments aimed for the forming and developing of legal elements which are necessary for the:

- Protection of the environment, which means: the protection of living, working and broader environment,
- Establishing and realizing the right of man on the healthy environment, and
- Struggle against doings that can be seen as environmentally oriented delicts, especially crimes.

If we, for the moment, point our attention on the area of ecological values and its opponents - possible environmental crime doings as the challenge that request adequate answers at the level of laws and their norms, also their realizing in reality, we have to recognize such legal elements as the needed parts of positive legislations - guaranties for ecologically positive thus socially wanted and legally prescribed, as well as established possibilities for corrections of unwonted, from this reason incriminated, and in many cases done. But for a long time we had not possess constitutional fundaments for such legislative and practical doings. Doings that provide *Ecology Law* development at the same time as scientifically and practically oriented discipline. Parliaments for a long time felt no need to adequately form, precisely express and at the same time establish:

1. Environmental values,
2. Environmentally oriented rights,
3. Adequate authorities,
4. Obligations,
5. Responsibilities, including not only professional but also penal responsibilities as the instrument for:
    - Sanctioning of unwonted, from such reason prohibited, thus

- Establishing of the general prevention elements.

Hence many constitutions, as for example previously mentioned Constitution of the Kingdom of Norway or the Kingdom of Belgium, for a long time didn't possessed norms formulated with the purely ecologically protective function or functions. But social, economical, scientific, cultural, demographic and the other levels and parts of progress through the time lead to the updating of constitutions, even formulating of annexes and deeper reconstructions. For example Constitution of the Kingdom of Norway, although at force from the year 1814 now possesses Article 110b - Environment[274] and the Constitution of the Kingdom of Belgium possesses Article 7bis[275]. Practically the same had been done with the Constitution of Federal Republic of Germany, from the year 1949th , that had been modified later with the "Article 20a – Protection of natural resources". What else, in actual time increasing number of constitutions which are not young legal products possess expanding number of such ecologically oriented and mutually connected norms. Some of those constitutions even have completely new environmentally oriented chapters.

In actual time is present growing number of constitutions that possess norms formed with the primary aim to treat environment and all the values and relations connected with it or formed on the base of it, especially at the terrain of Europe. Such constitutions are either relatively new[276] or recently

[274] See Article 110b – Environment in the official translation of The Constitution of the Kingdom of Norway.

[275] The Constitution of the Kingdom of Belgium, although formally adopted at the year 1831 had been many times modernized, for our researching is of utmost importance reconstruction from the year 2007 when had been adopted Article 7bis that implements two ecology law principles into Belgium legislature:
Principle of sustainable development, and
Principle of intergenerational equity in rights and duties,
which is fundamental principal achievement of utmost importance for *Ecology Law* developing as legal, which means practical and applicable discipline.

[276] Such is, for example, Constitution of the Azerbaijan Republic; adopted on 12 November 1995, that by the Article 39 established the right of man on the healthy environment.

and deeply reconstructed[277]. All such constitutions access to the protection of environment as to specifically stated question, doing so in one of two ways:

1. Observing the need for the law and legal protection of environment as a means for realizing the human right to a healthy environment, and
2. Speaking directly about the environment and its elements.

Both ways had been formed, from the anthropocentric approach to environmental protection, and with the anthropocentric reason and aim of providing better living conditions for man, through last four to five decades, and not only with the new constitutions but with the amended also[278]. Examples of such constitutional, ecologically oriented norms are:

- Basic law of the Federal Republic of Germany, its redaction from the year 1971[279], that establishes federal protection of flora, fauna an air, while all the other elements of environmental protection regulate federal units,
- Article 24 of Republic of Greece Constitution, from the year 1975, that established the obligation to state to protect living and working environment,
- Switzerland Constitution, articles: 73.-86[280],
- Constitution of Belgium, its Article 23, which established the right of everyone to the living conditions in line with human dignity as well as

[277] See: Joldzic (1997) O elementima neophodnim za uspostavljanje ekološkog prava kao samostalne discipline pravne nauke; sekcija 4.2.2. - Odnos ekološkog i ustavnog prava (On the elements necessary to establish Ecology law as independent law science discipline, sub-sub part 4.2.2. – Relations between Ecology law and Constitutional law discipline), *Strani pravni život* (Foreign legal life), No 2, pp 3 – 66.
[278] See Joldzic (1996b), p 127.
[279] Grundgesetz, May 23, 1949, Fassung vom 18. 3. 1971.
[280] Switzerland Constitution, Adopted by the Federal Parliament on: 18 Dec 1998, Adopted by Public Referendum on: 18 April 1999, in force since: 1 Jan 2000. Amendments (8 Oct 1999 – 20 June 2003).

solidarity between generations, while Article 7bis established the jurisdiction of federal, regional and local authorities in the area of sustainable development, economy and environment[281]“,

- Norms that established human right to a healthy environment, as well as the guarantees of the same, as can be clearly visible within the former FRY Constitution, especially its Articles 52 and 77, as well as through current articles: 74, 89 and 97 of the Constitution of the Republic of Serbia[282],

as well as the norms from many other constitutions. We also point that such constitutional developments have not been limited at the European states, which can be easily seen from the examples of:

- Constitution of Indian Republic[283], especially Article 48A that established the obligation of State „to protect and improve the environment and to safeguard the forests and wild life of the country“, and the Article 51A under (g) that established duty for every citizen „to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures“,
- The Constitution of Brazil, which in its Article 225 established the obligation of environmental protection, including the protection of all good suitable to be used by people[284].

All the constitutional text that we observed and whose elements explained, established, in the narrower or wider volume, at the level of

[281] DIE VERFASSUNG BELGIENS (Jahr 1831); Koordinierter Text vom 17. Februar 1994. This text later had been deeply reconstructed at the year 2004th and 2007th but not the Article 23.
[282] Ustav Republike Srbije (1996).
[283] Constitution of Indian Republic, Redaction from the Year 1976.
[284] See: CONSTITUTICAO DA REPUBLICA FEDERATIVA DO BRAZIL; Emenda Constitutional No 20 de 1998; promulgada Congresso National em 15/12/1998, Article 225, paragraph 1, under 1.

states, possibilities, but obligations also, for the protection of human right on healthy environment, as well as protection of the elements of such environment, through forming and putting in force adequate legal and sub-legal acts at the levels of parliaments and departments of states. This means to formulate and put in force legal and sub-legal acts that:

- Regulate environmentally preferred relationships, but also
- Give clear and precise possibility of specific penal law, especially criminal-law, protection of the preferred environment resources and with preferred relationships to them or because of them,

Acts by which states establish and develop, although not:

- At the same time, nor
- Levels, and
- Ways, neither
- The same volumes.

But, what is of extreme importance, those constitutional texts opens in essence legitimate and fully legal way for states to participate in the construction of *International Environmental Law* and *International Policy*. Just by processes at the national levels, clearly establishing and developing the right to a healthy environment and duty to preserve it[285]. This automatically imply cooperation with other countries at this field[286] having in mind that the legal action solely on intrastate area does not provide sufficient grounds care, for the simple reason that pollutions knows no boundaries nor stop on them.

In the actual time constitutions that explicitly speak about the values of the environment constitute a minority in the mass of existing constitutions,

[285] See Joldzic, V. and Milicevic, G. (1995b).
[286] Ibid, p 8.

but are majority of the mass of European states constitutions. Also, when we analyze constitutions within Europe, most of them are:

- Relatively recently and deeply amended in the aim of human right on healthy environment protection through the protection of environmental values, or
- Constitution put in force in recent years, as are, for example, constitutions of Switzerland and Serbia.

But no matter to which of the two groups some observed European constitution belongs, approach to the environmental protection achieves at one of two ways:

- Looking at the need to develop legal environmental protection as a means for achieving the fundamental human right to life, precisely at a healthy life in the for such life adequate environment, or,
- Speaking directly about the environment and its elements as well the need and way for protection.

Both of these approaches are truly anthropocentrically formed with the aim of providing better living conditions for humans[287], and often expressed very precisely formulated norms, moreover standards of complex structures. The building of constitutions, or their radical upgrading, through the time had been developed at more and more quick and complex ways, especially during the last four, and particularly the last two decades[288].

What we have noticed is the fact that all of the above mentioned texts, in a narrower or broader scope, explicitly or implicitly, establish the obligation for states to protect the elements of their environments, which means to formulate precisely and enforce adequate legal and sub-legal

[287] About the anthropocentrically oriented Ecology Law logic se: Joldzic (1999), pp 20. – 22.
[288] Joldzic (1996b).

acts, placing them at the appropriate places in the formations of their legal systems (legal structures), by them:

- Regulating ecologically desirable way of relationships, and
- Giving clear and precise possibilities to protect environmental values, resources and especially rights with the penal and especially criminal law norms.

Hence to this comes, within the legal theory and the laws of modern countries, though understandably nor fast or in the same scope. But, for our topic is of extreme importance, such constitutional texts opens a legitimate, and in essence fully legal, way for states to participate in the processes of *International Environmental Policy* and *International Environmental Law* constructing, including constructing of many necessary *Penal Law* elements. This at the first place through the processes of establishing and developing right to a healthy environment and duty to preserve it, which also and automatically means that states establish formal legal possibilities for desirable and complex mutual cooperation at this field[289], including at the fields of environmental values protection through judicial cooperation. This, of course, in the aim of qualitative protection of all the elements of importance for the *Ecology Law* realizing, having in mind that ecological values and rights can be preserved in many cases only if states cooperate. This from the simple reason that pollution in many cases do not knows any boundary or stop at it.

[289] As had been regulated in the constitutions of Yugoslavia and Republic of Serbia. See: Joldzic, V. and Milicevic, G. (1995b), p 8.

CHAPTER 6

ECOLOGY LAW PRINCIPLES AND HOW WE CAN OBSERVE AND SYSTEMATIZE THEM

Trough many years of developing process, regulating various individual questions that had been expressed as ecological, approaching through time to ever-expanding aspects of their perceiving, parallel at the level of national legislations as well as of the international relations, law has always started from already stated and confirmed principles. That is why, for example, rules that treat rights of neighbors, and rules that regulate damage compensation, have been adopted from the other law branches, mostly from *Civil Law*, adequately adapted and included in the amount of rules which generally regulate many aspects of *Ecology Law* relations. As the objects and questions in reference with *Ecology Law* through time have multiplied, it has become obvious that the used principles of the long time existing law branches are insufficient to the new tasks' adequate accessing. High necessity has been expressed to establish a new set of principles for the *Ecology Law* regulating, principles adequately usable at the *general*, as well as at the *group* and *individual objects* of *Ecology Law observing and threatening (*regulation).

Voluminous law texts, which regulate some ecological questions, have been present, for decades, at the levels of national legislatures. Their number is in constant increasing. Inside the growing structure of *Public International Law* such answers at the environmental law questions through the time also take much more important place. Such law creations, as the answers at actual environmental problems as specific questions, at both levels, of international law and national legislatures, had resulted, and still arise, from law-logical need to resolve many law vacuums. Law vacuums in many circumstances when there was obvious need to regulate some questions at a new way, *in principium* different from ways which are characteristic for other and older law branches. It becomes clear that for concrete types of *Ecology Law* relations new principles have to be established and joined to the law science and practice reality. It has already happened and is still happening today. *Ecology Law* has been shown as constantly changeable and developing science branch. This became obvious, especially after the year 1972, when, on the base of the UN Decision No 2398 from the year 1968[290], had been held in Stockholm Conference on the Human Environment[291].

For this conference Barbara Ward [director of the International Institute for Environment and Development (IIED), formed at the year 1971] with René Jules Dubos prepare and publish study: Only One Earth:

[290] The General Assembly Resolution No 2398: Problems of the Human Environment, 3 December 1968.

[291] See: Déclaration de la Conférence des Nations Unies sur l'environnement, Rapport de la Conférence des Nations Unies sur l'environnement, Nations Unies, (Déclaration de Stockholm) A/CONF.48/14, 2 et Corr.1 (1972),
UN Doc: A /CONF. 48/14/Rev.1 (1973): Report of the United Nations Conference on the Human Environment, Stockholm, 5-16 June 1972, and
Kiss and Sicault (1972) La Conférence des Nations Unies sur l'environnement (Stockholm, 5/16 juin 1972). In: Lyon: *Annuaire français de droit international*, pp 603-628.

The Care and Maintenance of a Small Planet[292]. In this book for the first time had been prepared and used, but also laconically explained, terms:

- sustainable development, and
- social dimensions of sustainable development,

and also crystallized the need for adequate social dimensions of sustainable development.

For us is of extreme importance that previously mentioned Twenty-third session of UN General Assembly, at its 1742 plenary meeting, given the task to Gro Harlem Brundtland to form multidisciplinary team and prepare one more material for future Stockholm Conference on the Human Environment, more precisely: To research *International Law* documents of importance for the environmental protection and extract by them formed distinct principles that can be observed as the *Principles of the International Environmental Law*[293]. This operation, through the collection and analysis of many international treaties, had been successfully done. Result had been transformed into some kind of draft material and later into 26 principles of so cold Stockholm Declaration[294]. Stockholm Declaration proclaims right, as well as obligation, of all sovereign states:

- To preserve environment for present and future generations, also their obligation,
- To cooperate on this field,

[292] Ward and Dubos (1972): Only One Earth: The Care and Maintenance of a Small.

[293] We must have in mind that principles of the environmental importance have been in constant forming and development practically from the Convention for Settlement of Difficulties Arising from Operation of Smelter at Trail forming, legislative text signed at Ottawa, at April 15, 1935, between USA and Canada, which first formed *Principle of Standardization*, also known as the *Standardization Principle.* Principle that we need to differentiate, for example, is it something expressed as the unwonted pollution or is not such pollution.

[294] Originally named and placed as: I chapter - Declaration of the United Nations Conference on the Human Environment, of previously appointed document: Report of the United Nations Conference on the Human Environment, Stockholm, 1972, pp 3-5.

- To cooperate on establishing the international agreements which will concern environmental matter (in essence and at the first place *conventions*, but also needed annexes for them), by which should be regulated questions of the environment preservation:
    - On the international area, and
    - On the territories of sovereign states, especially from outer space pollution.

In accordance to all mentioned task had been constituted obligation for states to define:

- Future International Law elements, as well as
- Succeeding domestic legislations, and
- Responsibilities for indicated pollutions.

By this document of *International Policy* and at the same time *International Law* had been created field for faster development of many future principles of the *International Ecology Law*.

Having in mind explained at previous pages we have strong reasons to research and use the Ecology Law principles.

At first place this process of *Ecology Law principles developing* can be observed as constant, distinct and of really big importance at the same time for legislatures of states as well as the *Ecology Law* as scientific discipline. From this reason we think that is really important to include the matter of *Ecology Law Principles* into comprehensive substance of the *Ecology Law* matter studying, especially *General Part of the Ecology Law*.

Of course we have to give some attention to *the principles of Ecology Law* also having in mind that all them we can observe as specific, really significant, *differentia specifica* of this grooving law branch. Further, knowledge of these principles is presumption for the *Ecology Law* rules

forming and realization in reality. We think that is logical and useful, in order to achieve such results, previously:

1. To analyze all the observed principles then
2. Group them, which means
3. To divide them into groups according to their characteristics that can be detected through the process of scientific researching and precise defining.

Such our logical approach leads us also to conclusion that some of them can be observed from different angles, and, concerning this fact, systematized differently. We also strongly point that:

1. Many of the *Ecology Law Principles* have some but not all the same characteristics, as well as that
2. Principles that can be observed as the *Principles of the International Ecology Law* also can be perceived as the ecological principles at the levels of national legislatures,
3. Principles, about we are talking, also are under the influence of *interactive effect* of *International Ecology* (*Environmental*) *Law* and national legislatures.

In our further text, while explaining the *Ecology Law Principles*, their system (how we imagined it) and their roles, we also shall present some examples from the levels of *International Environmental Law* and national legislatures.

We also have to appoint that principles can be divided into two groups:

1. *Principles that arise from political texts*, such are: charters, declarations, recommendations, *et cetera*, and occasionally are repeated through a number of later political texts, but from law formal side *they are non-binding*, they only got their law importance:

- Through the processes of adoption, by the official signatures of authorized representatives of states, and their implementing into main elements of national legislatures, and
- By explicit indicating, mainly in constitutions, that generally accepted rules are part of national legislature, as, for example, the principles from the Charter of the United Nations[295],

2. *Principles that had been designed (formulated) through the processes of international legislative treaties forming and* , after that, *acceptance*, mostly by the ratifications. Such principles are binding for every Party to the legislative treaty, of course if concrete State does not form reservation(s) to some element(s) of specific treaty, from this reason also to the some principle(s) defined by this International law text.

Principles from the first group mainly originate from *declarative and in essence political texts* of international importance, texts usually approved by high representatives of states. This means: They originate from the international declarations such are: Charter of the United Nation, Stockholm Declaration, Rio Declaration on Environment and Development[296] and many other, mainly of global and continental political importance.

Principles formally constituted and put in force through the processes of international legislative treaties forming, and formal acceptance, are present in a much greater number. This process of their forming is long and includes:

[295] See as example for explanation: Article 2 of the Charter of the United Nation, San Francisco, USA, Year 1945.
[296] Rio Declaration on Environment and Development, United Nations Conference on Environment and Development (1992).

- Principles from texts that are not directly and primarily oriented at the protection of the environment, but also possess such role[297], and
- Principles formed through legal text primarily or only oriented at some ecologically important question(s).

One number of such, by legislative way formed, principles had not been formed before or at the Stockholm conference but through the latter years. Such is, for example *Precautionary Principle*, now widely, even globally accepted.

Hawing in mind growing roles and importance of principles that at first step start as political recommendations for desirable and useful legislative solutions ,as well as such more important role of purely legislatively (through international treaties) formed principles, we shall, at next parts of this text, analyze and explain them, although at laconic way; laconic from the simple reason that researching and explanations of *Ecology Law Principles* require much more efforts and time, of course, to be treated by special study.

Entering into the matter of *Ecology Law Principles*, at the start, we feel obliged to remind our reader that discussion about it started some thirty years ago, at the fields of German law science as well as between French lawyers. German lawyers see *Ecology Law Principles* as specific *trias*[298] that is composed of:

- Precautionary Principle,
- Compensation Principle, and
- Principle of Cooperation,

[297] Such is, for example, Treaty Banning Nuclear Weapons Test in the Atmosphere, in Outer Space and Under-Water (1963).
[298] Latin word for triad or three.

While French scientist *Ecology Law Principles* divide in two big groups:

- Principles that manage (*principies directeurs*), and
- Principles that inspire (*principies inspirateurs*)[299].

We think that is, on the base of researching the characteristics and locations of *Ecology Law Principles*, as well as their primary aims, more logical to co-locate all of them in five big groups:

1. Principles of the Negative Ecological Effects' Annulling,
2. Legal Status of Natural Resources and Common Areas of Mankind,
3. Prevention Principle and its Derivatives,
4. *A Posteriori* Protection Principles, and
5. Principle of Cooperation and his Derivatives.

We form and name first group: *Principles of the Negative Ecological Effects' Annulling*, as group composed with seven principles that are primarily formed to eliminate ecologically negative effects.

Second group: *Legal Status of Natural Resources and Common Areas of Mankind* we observe as set of principles formed and aimed for adequate legal treatment of natural resources: 1. between borders of states, 2. across the national borders of two or more states and 3. at the international areas also.

Prevention Principle and its Derivatives is product of principal law access to the ecological problems that can be prevented and/or significantly reduced.

[299] See: Dupuy, Rene-Jean (Ed.) Le Droit International de l'Environment et la Souverainere des Etats. In: The Future of the International Law of the Environment, p. 29.

As *A Posteriori Protection Principles* we observe principal assess to legal ways how to resolve some ecological problem that can emerge, or is present, on the one's action base, to resolve such problem at the territory of national or foreign state. This means we locate in one group principles that, *in principium*, regulate such questions of importance for subjects of law, physical and artificial persons, which means what and how they can do if some of its rights or values is endangered or had been harmed.

Finally *Principle of Cooperation and his Derivatives* is group composed of a number of principles derived from international legislative treaties that regulate important questions of cooperation, at first place between states but also physical and artificial persons, from the reason of some ecological problem appearance and the need of resolving, or from the reason of possible appearance of such problem, having in mind that such problem or problems in many cases cannot be solved by the one subject doing, in many cases even one state activity.

CHAPTER 7

PRINCIPLES OF THE NEGATIVE ECOLOGICAL EFFECTS' ANNULLING

7.1. The Polluter Pays Principle

One of the first-formed, possible the first autochthonous principle of the *Ecology Law*, is known as: *The Polluter Pays Principle*. When we are considering its history and nature it is really important to remind at the Plato work: The Laws[300], through which this philosopher called ancient Athenian society to prevent pollutions of land and waters as well to charge polluters, having in mind nature, vulnerability and usefulness of waters and land.

The Polluter Pays Principle, although not so named, started long ago in modern European society as specific *Environmental Policy Principle* through the work of British economist Pigou[301] and his idea that taxes can be collected per unit of pollution of air or water and used to correct negative pollution effects, which had been the first idea about the logical structure of such *Environmental Policy Principle*. That had been main

[300] See: Plato: The Laws, Book VIII. From: Project Gutenberg EBook of Laws.
[301] Pigou, A., C. (1920) The Economics of Welfare.

reason why this principle and his respect were transformed from the *Environmental Policy Principle*, which can be observed as specific *law-policy recommendation* for states, into *Ecology Law Principle* and implemented into national legislations. Its respect leads towards the usage of a cleaner technologies and production of goods that are less harmful to environment[302].

Transforming process from the *Environmental Policy Principle* toward *Environmental Law Principle* had been slow and gradual. Also this process had been present not only in the Great Britain but at the terrain of the European states also, through decades passing from *political* to *legislative idea*, after that into *legislative rule*, present not only in the legislation of Great Britain but also of many developed states, or to say at the another way, in the norms that regulates taxes for pollutions.

In the last more than forty years, starting with the OECD Recommendation, from the year 1972[303], *Polluter Pays Principle* has widely been implemented into *International Environmental Policy* and over time, more and more, into *International Law*. That is why it is present, for example, in the:

- Article 11 of the European Charter on the Environment and Health -- Principles for Public Policy[304],
- Rio Declaration, Article 16, which further precise this principle,
- Agenda 21, that defines obligation of the environmental cost including into price of the products[305], also that governments

[302] On this facts see closer: Tranin, A., A. (1987), pp 43-44.
[303] See: OECD Council Recommendation on Guiding Principles Concerning International Aspects of Environmental Policies (May 1972), and OECD Council Recommendation on the Implementation of the Polluter-Pays Principle (November 1974).
[304] European Charter on the Environment and Health, Principles for Public Policy, 11 December 1989.
[305] Agenda 21, Paragraph 2.12.: "...commodity prices should reflect environmental cost."

should use “free market mechanisms in which the price of goods and favors will reflect on the environmental cost[306],

in essence the articles that can be observed as *specific recommendations* from *International Environmental Policy* to national legislatures, but also as the *soft law* norms from the simple reason that all the numbered norms are from documents that had been ratified from really great number of sovereign states.

Of more explicit importance is fact that, at the field of *Public International Law*, especially *International Environmental Law*, are present many legal texts, precisely: Legislative conventions and their annexes that regulate questions of the *Polluter Pays Principle* applying at real problems, present in much bigger number that even professional public knows. To illustrate this with some examples and explanations:

1. Convention for the Protection and Development of the Marine Environment of the Wider Caribbean Region[307] that, with the Article 14 – Liability and compensation, established responsibility and duty to compensate for “damage resulting from pollution of the Convention area”.

2. The 1990 International Convention on Oil Pollution Preparedness, Response and Cooperation that declares PPP as a “general principle of International Environmental Law[308]” and applies *the Polluter Pays Principle* (PPP) with existing civil liability and compensation schemes for produced damages.

[306] According to Agenda 21, supra note 6, Paragraph 30.3.
[307] The Convention for the Protection and Development of the Marine Environment in the Wider Caribbean Region, adopted in Cartagena, Colombia on 24 March 1983, known also as Cartagena Convention.
[308] International Convention on Oil Pollution Preparedness, Response and Co-Operation, (1990), p. 79.

3. Bamako Convention on the Ban of the Import into Africa and Control of Transboundary Movement and Management of Hazardous Waste within Africa (Year 1991), that with the Article 12 enact obligation for Parties to formulate Protocol to set appropriate rules and procedures in the field of liabilities and compensation for damage resulting from the trans-boundary movement of hazardous wastes.
4. Convention on Transboundary Lakes and Watercourses[309],
5. European Community Treaty, now Treaty of the European Community, Article 191 (2),
6. The 1992 Helsinki Convention on the Protection of the Marine Environment of the Baltic Sea Area by its Article 3.4 makes the Parties of Convention responsible for pollutions, hence to pay for damage that affected the environment.
7. Convention for Protection of the Marine Environment of the North-East Atlantic (OSPAR Convention), (Paris, Year 1992) by the Article 2b determined that: "…Parties shall apply…the polluter pays principle, by virtue of which the costs of pollution prevention, control and reduction measures are to be borne by the polluter". Disincentives such as penalties and civil liability can also be seen as application of the PPP.
8. Madrid Protocol to the Barcelona Convention[310] also in detail regulates and at such a way put in real legal force observed *Polluter Pays Principle*, with the Article 27 - Liability and compensation.

[309] See: Convention on Transboundary Lakes and Watercourses, Helsinki (1992), Article 2, supra note 36.
[310] Madrid Protocol to the Barcelona Convention, Madrid, Spain, on 14 October 1994.

9. The 1996 Protocol to the London Dumping Convention, by its Article 15 (Responsibility and liability) also precisely, according with the principles of International Law, prescribe responsibility and liability for damage to the environment, according, literally to the *Polluter Pays Principle.*

The above mentioned as many other documents of *International Law* of: global, continental and regional importance that had been established in last more than forty years, clearly explained great importance of *Polluter Pays Principle.*

The *environmental policy idea* of *Polluter Pay Principle* had been slowly (through decades) transformed into *legislative idea*, after that into *legislative rule*, not only in Great Britain, after the work of Pigou, but in many other developed states, or to say at the another way in the norms that regulates taxes for pollutions. Of special importance is to mention, at first place, one such legal act of the Japan State, from the year 1967: Basic Law for Environmental Pollution Control[311] that protects not only the environment but also victims of pollution(s). By this act had been through *Polluter Pay Principle* legislative establishing also established:

- the obligation for polluter to pay: 1. for damage, as well as for 2. damage produced to human health, and
- the obligation to State to compensate for injuries if polluter does not possess many or is polluter inaccessible.

After that, for example, Pigou' idea had been reformulated and legislatively established by the State of Connecticut, through the Clean Air Act[312] and shortly after that by the United States of America Federal

[311] See: Mallikamarl, Sunee (2016), pp 55-107.
[312] From the Year 1967. See: Stern, Artur (1982), p. 48. History of Air Pollution Legislation in the United States, *Journal of the Air Pollution Control Association*, Volume 32, No. 1, pp 44-61.

Clean Air Act[313]. With such acts, for decades, the basis of observed principle had been defined through the rule that polluter:

- Must take into account all the *pollution prevention expenses* into his cost of good's production[314], or that
- Could pay the caused damage, damage caused by the process of production as well as with products and by-product.

By such acts states initially had been taxed only measurable pollutions of air, waters and land. But they had not covered all the aspects and kinds of expressed environmental pollution problems. For example pollutions generated with the products and by-products through their life cycles, but also with the industrial garbage produced at the end of life cycle of many economic products. From this reason European Union put in force legislative documents such is Directive 2002/96/EC[315], by which established obligation to producers of such products and/or dealers, to collect products, at their own expense, at the end of products' life cycles, when all such product transform into specific waste[316]. Such legal access to the polluter's obligations through the time has become more complex.

In actual time polluters have to take into account of the produced good's price so called *complex environmental cost*, because:

1. The productive process could be "clean'', but not always produced goods,
2. Production often, parallel to main product, generate *by-product(s)*, which can burden the environment, also *production waste*, and

[313] This text, officially known as the Clean Air Act of 1970, had strongly reconstructed earlier Federal Clean Air Act, from the year 1963.
[314] For this obligation present in many legal texts, see, for example: Comprehensive Environmental Response, Compensation and Liability Act (1980).
[315] Directive 2002/96/EC of the European Parliament and of the Council (27 January 2003) on Waste Electrical and Electronic Equipment.
[316] Ibid: Preamble of this document under (20), and Article 5, Paragraph 2, under: (a) and (b).

3. Such goods, as the main results of economic production, at the end of product's life cycle also can possess polluting characteristics.

Through the years such legal approach to the *polluter pay principle* including into legislatures had been and is still in process of developing and applying in many states, to name such example from the legislature of the Republic of Serbia Law on the Protection of the Environment, Articles 11 and 12[317] and more important Law on Waste Management[318], which literally established and precise obligation for producers and diallers to recollect used products on their own cost.

7.2. The Standardization Principle

Development of new *Ecology Law* institutions, in last decades has been enriched with the *Standardization Principle*[319]. This principle has its long time roots in the Special Agreement - Convention for Settlement of Difficulties Arising from Operation of Smelter at Trail, signed at Ottawa, at April 15, 1935[320] and by this bilateral agreement based on the International Law established special Trail Smelter Arbitral Tribunal[321], and its first Decision on April 16, 1938[322].

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[317] See: Republic of Serbia Law on the Protection of the Environment, from the year 2004.
[318] See: Zakon o upravljanju otpadom (Law on Waste Management), Year 2009.
[319] In world literature well known as: Pollution Prevention and Waste Minimization Principle. See, for example: Pollution Prevention Act of 1990. United States Code, Title 42 – The Public Health and Welfare, Chapter 133, and The Habitat Agenda (1996) – Section IV – 5.
[320] See at: U. S. *Treaty Series*, No 893, The Trail Smelter Arbitration [Canada - USA] in *American Journal of International Law* [1941]. *No* 35, p. 684-713, also U.S. versus Canada; III R.I.A.A. 1911, 1965; April 16, 1938, and Phoebe, N. O. (2001) *State Responsibility for Transboundary Air Pollution in International Law*, p. 10.
[321] Of special importance is to note that this Tribunal is not historic institution but works continually from the time of establishing to our days.
[322] See: Trail Smelter Arbitral Tribunal – Decision Reported on April 16, 1938, to the Government of The United States of America and to the Government of the Dominion of Canada under the Convention Signed April 15, 1935.

Mentioned Convention on the Trail Smelter Arbitration, by its Article II, paragraph 2, prescribed that "The Governments may each designate a scientist to assist the Tribunal", from the simple reason to find out exactly if some pollution and damage is or is not produced, precisely, by investigation to conclude that "damage is claimed to have occurred or to be occurred (Article X, paragraph 2)". This literary means: To form precise acknowledgement about:

1. Produced damage, or
2. Possible damage – *reasonable doubt* or *precise cognition* that such damage shall be done!

Scientist produced their report to Arbitration that trail smelter from Canada continually produced and in the time of investigation still produce SO_2 fumes and by such fumes not only dangers for air, waters, woods and agrarian products but also payable damages produced at all those real values. They produce their investigative results at the terrains and also on the base of constant SO_2 air pollution measuring by adequate apparatuses. Their report also indicates that is necessary to continually measure possible air and other pollutions, accordingly to science knowledge in the aim of fast and adequate responses at unwonted and dangerous pollutions.

Of special importance also is fact that this arbitration, by own decision, has established principle that "no state has the right to use or permit the use of its territory in such a manner as to cause injury by fumes in or to the territory of another or the properties or persons therein, when the case is of serious consequence and the injury is established by clear and convincing evidence[323]".

But, from such:

- Scientific report, and

[323] See: Trail Smelter arbitral award, 3 RIAA 1938, 1911-1937 (initial decision, 16 April 1938) and 1938-1981 (final decision, 11 March 1941).

- Decision of Arbitration

to the adequate formulating and the establishing of standards necessary for measuring of pollutions had passes many years.

As can be seen, the first qualitatively formulated legislative air protection act: The Air Pollution Control Act of USA, from the year 1955, "provide research and technical assistance relating to air pollution control[324]". This also means:

1. Scientific and technical methods and standards to measure air pollutions, and
2. Measures of pollutions that can be treated as:
   - Unwonted, as well as
   - Prohibited.

From the reason of such practical necessity this had been done, practically parallel to the Clean Air Act of 1970 approving, by forming and approving of the National Environmental Policy Act (NEPA) and by this act Environmental Protection Agency (on December 2, 1970) "to consolidate in one agency a variety of federal research, monitoring, standard-setting and enforcement activities to ensure environmental protection[325]". EPA on the start of work works on and adopted the:

- National Ambient Air Quality Standards,
- New Source Performance Standards (NSPS), and

[324] See: The Air Pollution Control Act of 1955, also:
Legislation - A Look at U.S. Air pollution Laws and their Amendments, Clean Air Acts of the Year: 1955, 1963, 1970 and 1990.
[325] From: The Birth of EPA.

- National Emission Standards for Hazardous Air Pollutants (NESHAPs)[326],
- Three sub-legal acts that established necessary standards for air quality protection.

As it had been, as such qualitative legislative act, Clean Air Act (and accompanying standards) firstly established inside the legislation of USA[327], afterwards other modern states broadly accepted it, as well as necessary and following air quality standards. Such legal products, for example, after the USA entered into force in: Canada[328], France, Germany, Sweden and Serbia[329]. Today it is present at the field of *International Ecology Law.*

The crucial parts of the *Standardization Institute* are two notions: "pollution" and "the source of pollution''. Pollution represents every change of medium quality. For example, from the Canadian point of view, today widely accepted, standard of pollution has three levels:

1. Permissible,
2. Permissible and wanted, and
3. Level against which measures are taken[330].

From widely accepted opinion "origins of pollution" are every origin that "helps" the pollution of the medium.

The *Institute Of Standardization* in International Law, as we pointed, has been firstly implemented into International Law by the previously

[326] See: Evolution of the Clean Air Act, May 2016.
[327] See also: Hunter, D., Sommer, J. and Vaughan, S. (1994) p. 22.
[328] Incorporated in the Article 4, of Canadian Clean Air Act (Year 1971). After that in many other Canadian legal acts, for example in:
Arctic Waters Pollution Prevention Act, Year 1985 and newest one
Arctic Waters Pollution Prevention Act, Year 2003.
[329] See: Articles 39 and 40 of the Republic of Serbia Zakon o zaštiti životne sredine (Law on the Protection of the Environment).
[330] According to Article 4, of the Canadian Clean Air Act, Year 1971.

explained Trail Smelter Arbitration between Canada and the United States Decision, but not in details such are present in actual International Environmental Law. Nevertheless these elements (of defining the air pollution standards) are, as the needed and enough, generally accepted, by which the *Standardization Principle* is also accepted, at two levels:

1. Of *soft law*, through texts of widely accepted even ratified text of the *International Environmental Policy*, and
2. Of the *International Environmental Law*.

Excellent example of so cold soft *law texts* are:

- Stockholm Declaration, Principle 6 that call states to halt pollutions that ”exceed the capacity of the environment to render them harmless” and
- Agenda 21, Chapter 26, especially next cited elements of this chapter:
  - “the lands of indigenous peoples should be protected from environmentally unsound or culturally and socially inappropriate activities;
  - traditional knowledge, values and resource management practices should be recognised;
  - the cultural, economic and physical wellbeing of indigenous people and their communities is dependent on renewable resources and ecosystems including sustainable harvesting, and;
  - national dispute-resolution arrangements in relation to the settlement of land and resource-management concerns should be strengthened[331]‘‘.

[331] See: United Nations Conference on Environment and Development - Agenda 21, Chapter 26 (Rio, 1992).

The elements of so cold *hard law*, precisely from the International Law texts that can be observed as *legislative conventions* and their accompanying *annexes*, are numerous. Such are next documents and their elements:

- Convention on Long-range Transboundary Air Pollution (CLRTAP)[332] that established:
- By the Article 1 – Definitions, "air pollutions" and "long range trans-boundary air pollution", also
- Obligations for states, to limit and reduce air pollutions, by the Article 2 – Fundamental principles, which is only feasible on the base of air quality standards.

Protocol on the Reduction of Sulphur Emissions or their Transboundary Fluxes by at least 30 per cent[333], that precisely obligated states to reduce $S0_2$ fumes or at least 30% below the level of the year 1980, to the end of the 1993 (articles. 2 and 6) as well as obligation to study their needs for further sulphur dioxide reductions (Art. 3).

The 1988 Protocol concerning the Control of Nitrogen Oxides or their Transboundary Fluxes[334] also established obligation for states to act under the *Standardization Principle*, by defining so cold "critical load (Art. 1, paragraph 7)" that produces "significant harmful effects on specified sensitive elements of the environment" and to control and reduce emissions of nitrogen oxides (Article 2, Paragraph 1) by national standards [Article 2, paragraph 2, under (a)] and (b),

[332] Convention on Long-range Transboundary Air Pollution (CLRTAP), signed in Geneva, November 1979.
[333] Helsinki Protocol on the Reduction of Sulphur Emissions or their Transboundary Fluxes by at least 30 per cent, Helsinki, year 1985.
[334] Protocol concerning the Control of Nitrogen Oxides or their Transboundary Fluxes, Sofia,
31 October 1988.

Protocol concerning the Control of Emissions of Volatile Organic Compounds[335], that, by the Article 1, Paragraph 1 subparagraph 8, defined “critical levels” and with subparagraph 9 defined "volatile organic compounds", establishing duty for parties to control and reduce emissions of organic compounds within the national boundaries and its ’trans-boundary fluxes (Article 2 - Basic obligations”, Paragraph 1). Also that from this reason apply appropriate national or international emission standards [Art. 2, paragraph 3, under: (a) (i)] which means to respect and practically implement *standardization principle* on the base of International Law elements that are in effect as ratified and in force.

Protocol on Further Reduction of Sulphur Emissions[336] that established precise ways of *standardization principle* applying, precisely by:

- Protection of human health and the environment from adverse effects, in particular acidifying effects (Art. 2, paragraph 1)”, and
- Reduction of annual sulphur emission (see Art. 2, par. 2 and Annex II).

The Protocol on Heavy Metals[337] prescribed to Parties obligation to reduce cadmium, lead and mercury emissions in the interests of environmental protection to limits specified in Annex V of this document [See Article 3 – Basic obligations, Paragraph 2, under (b)] which means to precise defined standards of their emissions.

Protocol to Abate Acidification, Eutrophication and Ground-level Ozone to the Convention on Long-range Transboundary Air Pollution[338]

[335] Protocol concerning the Control of Emissions of Volatile Organic Compounds, Geneva, Switzerland, on 18 November 1999.
[336] Protocol on Further Reduction of Sulphur Emissions, Oslo, Year 1994.
[337] See: Protocol on Heavy Metals, adopted in Aarhus, Denmark, Year 1998, and 1998 Protocol on Heavy Metals, as amended on 13 December 2012.
[338] Protocol to Abate Acidification, Eutrophication and Ground-level Ozone to the Convention on Long-range Transboundary Air Pollution, The Executive Body, Gothenburg, Sweden, 30 November 1999.

is formal law-logical part, specific addendum to the Convention on Long-Range Transboundary Air Pollution. Observed document is multi-pollutant protocol formed with the clear aim to reduce problems of: acidification, eutrophication and ground-level ozone by setting *Emissions Standards* (ceilings)[339] for: sulphur dioxide, nitrogen oxides, volatile organic compounds and ammonia. Its most important provisions, by which *standardization principle* get applicable form at the terrain of concrete problems annuling, are:

- Annex I - Critical loads and levels, and
- Annex II - Maximum allowable emissions [Emission ceilings (Amended, December 2005)],
- Annex IV - Limit values for emissions of Sulphur from stationary sources,
- Annex V - Limit values for emissions of nitrogen oxides from stationary sources, and
- Annex VI - Limit values for emissions of volatile organic compounds from stationary sources.

Convention for the Protection of the Ozone Layer[340] is another important legislative text aimed for the protection of air as ecological value and, at the same time, transmitter of possible pollutions. This text call states to protect the ozone layers by the work of adequate state apparatuses and on the base of the protocol[341].

[339] But to the USA and Canada is prescribed to apply their national standards: Canada-Wide Standards for Ozone (Particulate Matter and Ground-level Ozone) and National Ambient Air Quality Standard for Ozone, United States of America.
[340] Convention for the Protection of the Ozone Layer, Vienna, Year 1985, text from the Ontario Ministry of the Environment.
[341] The Montreal Protocol on Substances that Deplete the Ozone Layer (16 September 197) as either adjusted and/or amended in London 1990, Copenhagen 1992 Vienna 1995 Montreal 1997 Beijing 1999, published 2000 by Secretariat for The Vienna Convention

Although previous examples explained in detail *standardization principle* at the example of air protection this principle is applied at all the mediums, for example water of rivers, as is done through the legislative texts of the:

- Convention on the Protection of the Rhine against Chemical Pollution[342], and
- Convention on the Protection of the Rhine against Pollution by Chlorides[343],

now historical-legal texts, replaced with the Convention on the Protection of the Rhine[344] that, as regional legislative convention, with the Article 3, Paragraph 1, under (a) oblige State parties to maintain and improve quality of water, notably by preventing, reducing and eliminating unwonted pollutions, which request also implied respecting of water quality standards as well as equal standards for the waters of Rhine at the territories of all the Parties.

7.3. The Environmental Expertise Principle

Now widely present, the *Principle of Environmental Expertise* or *Environmental Impact Assessment Principle* (two names for the same thing)[345] possesses long history and way of structural developing. First

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for the Protection of the Ozone Layer and The Montreal Protocol on Substances that Deplete the Ozone Layer, United Nations Environment Programme, PO Box 30552, Nairobi, Kenya.

[342] Convention on the Protection of the Rhine against Chemical Pollution, *International Legal Materials*; Vol. XVI, No 2, Year 1977.

[343] Convention on the Protection of the Rhine against Pollution by Chlorides, Bonn, 3 December 1976.

[344] Convention on the Protection of the Rhine, Bern, Switzerland, 12 April 1999.

[345] In literature also well known as: *Pollution Prevention and Waste Minimization Principle*. See, for example, previously mentioned: Pollution Prevention Act of 1990.

steps toward it had been made through the Special agreement - Convention for Settlement of Difficulties Arising from Operation of Smelter at Trail, which defined:

- possibility (with the Article II, paragraph 4), for the Governments, that “may each designate a scientist to assist engaged the Tribunal”, and that
- “The Tribunal shall finally decide the questions, hereinafter referred to as "the Questions", set forth hereunder, namely:
    - (1) Whether damage caused by the Trail Smelter in the State of Washington has occurred since the first day of January, 1932, and, if so, what indemnity should be paid therefore?
    - (2) In the event of the answer to the first part of the preceding Question being in the affirmative, whether the Trail Smelter should be required to refrain from causing damage in the State of Washington in the future and, if so, to what extent?
    - (3) In the light of the answer to the preceding Question what measures or regime, if any, should be adopted or maintained by the Trail Smelter?
    - (4) What indemnity or compensation, if any, should be paid on account of any decision or decisions rendered by the Tribunal...?”

As it can be understood this bilateral convention formed, for the first time at the level of international legislative agreements, rules that:

1. Scientists, or to say at “modern way”: “experts” can be engaged,
2. Experts can be engaged to investigate particular case and:
    - Whether damage had been produced or not had been produced?

United States Code, Title 42 – The Public Health and Welfare, Chapter 133, and UN Habitat Agenda – Section IV – 5.

- And if damage had been caused what indemnity, if any, should be paid therefore?
- If damage should be paid, to what extent?
- If subject produced or still produce damage, what:
  - Measures, or
  - Regime,

`If any, should be adopted and applied, or maintained, on the base of legal decision of the competent authority (in our example on the base of the Arbitration decision)?

As we can see this first and bilateral, but legislative, agreement formulated most of the logical parts of principle now know as the *Environmental expertise principle* or under another name as the *Environmental Impact Assessment Principle*. But, what is surprising, this principle had long way of developing to the adequate forms and qualities at the levels of national legislatures, even of the United States of America and Canada.

To be precise, now widely present, the *Principle Of Environmental Expertise* its first days of existence at the level of the USA legislature had lived, only after several decades, through construction of the institute of *Environmental Impact Statement* as the part of the National Environmental Policy Act from the year 1969[346]. The mentioned law institute logically had been shown as the estimating of human influence on the environment. Of course: Estimate made by regulated procedure.

The mentioned American legislative document precisely defines what consist in the "environmental expertise'‘. By this law, environmental impact assessment is consisted of:

[346] See: National Environmental Policy Act, Year 1969.

1. Anticipating of effects on the environment, possible from the proposed project, and
2. Quantification and qualification of assumed negative results, unavoidable in case of the project doing,
3. Other alternatives to the proposed project,
4. Estimating of the effects possible from local short-termed pollution, and
5. Precise definition of the irretrievable processes and consequences on natural resources[347].

This principle, from the time of the USA National Environmental Policy Act entering into force had three ways and levels of developing. Precisely levels of:

- International Environmental Policy acts,
- International environmental legislative documents, and
- National legislatures.

A number of adequate examples of:

- Soft law from the international policy, as well as from the
- International Environmental Law,

had been explained at previous pages when we discussed problems of the *Polluter Pays Principle* and *Standardization Principle*. Both principles can be applied only through the work of experts and *Environmental Expertise Principle* practicable applying. But we think that is useful to remind at some more examples and their roles.

[347] In Serbia all those elements are included in the Pravilnik o analizi uticaja objekata, odnosno radova na životnu sredinu (Regulation on analyze of the influences of objects, or doings on the environment), at the year 1992.

At the level of *International Environmental Policy* for the *Environmental Expertise Principle* of utmost importance are three documents:

- Declaration of the United Nations Conference on the Human Environment, its:
  - Principle 1, which said that man has the fundamental right of life in an environment of a quality that permits a life of dignity and well-being,
  - Principle 2, which clearly said that the elements of environment must be safeguarded for the benefit of present and future generations through careful planning or management,
  - Principle 6, which said that "The discharge of toxic substances or of other substances and the release of heat, in such quantities or concentrations as to exceed the capacity of the environment to render them harmless, must be halted in order to ensure that serious or irreversible damage is not inflicted upon ecosystems".
  - Principle 7, which invited states to "take all possible steps to prevent pollution of the seas by substances that are liable to create hazards to human health, to harm living resources and marine life, to damage amenities or to interfere with other legitimate uses of the sea",
  - Principle 13, that call states "to achieve a more rational management of resources and thus to… adopt an integrated and coordinated approach to their development planning… compatible with the need to protect and improve environment for the benefit of their population",
  - Principle 14, which explained that "Rational planning constitutes an essential tool for reconciling any conflict between the needs of

development and the need to protect and improve the environment",

- Principle 15 that clearly said that "Planning must be applied to human settlements and urbanization with a view to avoiding adverse effects on the environment",
- Principle 17, which remind states that "Appropriate national institutions must be entrusted with the task of planning, managing or controlling the environmental resources of States with a view to enhancing environmental quality",
- Principle 18, which pointed that, for the reason of the achieving previously pointed aims, "Science and technology, as part of their contribution to economic and social development, must be applied to the identification, avoidance and control of environmental risks and the solution of environmental problems", also
- Principle 21, which clearly said that while states posses "sovereign right to exploit their own resources" also posses "the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction,"

ten principles that orientate toward work of independent experts and experts as members of administrative apparatuses at the problems of existed and possible dangers and damages that can hit man and/or the environment. If we observe mentioned principles as a sum and entity it is clear that this sum of *International policy principles*, as well any of numbered Stockholm Declaration principles, require the *Environmental Expertise Principle* applying.

- Rio Declaration[348], which reaffirmed the Stockholm Declaration, repeating its principles (although under another numbers), is another important document of so cold *soft law* formed at the level of *International Environmental Policy* that is also of special importance for national environmental legislatures developing. Solid number of them is of utmost importance for the *Environmental Expertise Principle* applying, although they do not point directly at it. Such Rio Declaration principles are:
  - Principle 1, which stands that human beings "are entitled to a healthy and productive life in harmony with nature", which requires application of knowledge,
  - Principle 2 (adequate to Stockholm Declaration Principle 21) which also clearly said that states posses "the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction",
  - Principle 8, which said that "States should reduce and eliminate unsustainable patterns of production and consumption",
  - Principle 11, which call on the *Standardization Principle* developing inside states, which requires application of knowledge, and
  - Principle 17 that directly said that "*Environmental Impact Assessment*, as a national instrument, shall be undertaken for proposed activities that are likely to have a significant adverse impact on the environment and are subject to a decision of a competent national authority".

[348] The Rio Declaration (12 August 1992).

- Agenda 21[349], which proposes that governments should:
  - "Promote the development at the national level of appropriate methodologies for making integrated energy, environment and economic policy decisions for sustainable development, inter alia, through environmental impact assessments[350]",
  - "Develop, improve and apply environmental impacts assessment, to foster sustainable industrial development[351]",
  - Do "investment analysis and feasibility studies, including environmental impact assessment[352]",
  - "Introduce appropriate environmental impact assessment procedures for proposed projects likely to have significant impacts[353]",
  - Pay attention at any possible modification of the environment and possible "environmental impacts[354]",
  - Especially so cold "coastal states" have to carry out "Prior environmental impact assessment" and on the base of this assessment "major projects[355]", including the systematic incorporation of results in decision-making", especially for sustainable use of resources[356],

[349] Agenda 21, original document of the United Nations Conference on Environment and Development, Brazil, Rio de Janeiro, 3 - 14 June 1992.
[350] Agenda 21, under 9.12 (b), p. 78.
[351] Ibid, under: 9.18 (d), p. 80.
[352] Ibid, under: 11.23 (b), p. 99.
[353] Ibid, under: 15.5. (k), p. 151.
[354] Ibid, under: 16.4., p. 155.
[355] Ibid, under: 17.6. (d).
[356] Ibid, under: 17.8., first passage, p. 169.

- To protect by the *environmental assessment studies* especially from oil companies works[357],

et cetera, practically to the end of Chapter 39, standing that further development and promotion of the widest possible use of environmental impact shall be done[358].

At the level of *International Environmental Law* for the *Environmental Expertise Principle* of utmost importance are many documents from global to regional levels, but two documents, and their elements, have to be especially listed:

- Convention on Environmental Impact Assessment in a Trans-boundary Context[359], after it
- UNECE (Aarhus) Convention on Access to Information, Public Participation in Decision Making and Access to Justice in Environmental Matters[360].

The Environmental Impact Assessment in a Trans-boundary Context Convention sets out, thru a number of articles, obligations for Parties to perform the environmental impact assessment of certain activities at early stages of planning (at the so cold "preliminary design" work). Also to:

"Prevent, reduce and control significant adverse trans-boundary environmental impact from proposed activities[361]", as well to

[357] Ibid, under: 17.20., p. 172.
[358] Ibid, under: 38.22. (i).
[359] The Convention on Environmental Impact Assessment in a Transboundary Context (also known as the ESPOO Convention), United Nations Economic Commission for Europe (UNECE) convention, signed in Espoo, Finland, at the year 1991, as amended on 27 February 2001.
[360] UNECE Convention on Access to Information, Public Participation in Decision Making and Access to Justice in Environmental Matters done at Aarhus, Denmark, on 25 June 1998.
[361] Article 2, paragraph 1.

"Apply the principles of environmental impact assessment to policies, plans and programs[362]",

Consult Party that can be significantly affected by the works from the Party of origin[363],

Prepare the environmental impact assessment documentation (précised by the Appendix II of Convention)[364],

"The Party of origin shall, after completion of the environmental impact assessment documentation… enter into consultations with the affected Party concerning, inter alia, the potential transboundary impact of the proposed activity and measures to reduce or eliminate its impact[365]", after that

Parties shall together form final decision[366], and

The concerned Parties, at the request of any such Party, shall determine whether, and if so to what extent, a post-project analysis shall be carried out[367]".

Convention on Access to Information, Public Participation in Decision Making and Access to Justice in Environmental Matters had been formed with the general objective and aim to "contribute to the protection of the right of every person of present and future generations to live in an environment adequate to his or her health and well-being[368]". Of special importance is "Article 6 - Public participation in decisions on specific activities", which précised that each Part shall give to the public all the information relevant to the decision-making, this means:

[362] Article 2, paragraph 7.
[363] Article , paragraph 1.
[364] Article 4.
[365] Article 5, paragraph 1.
[366] Article 6.
[367] Article 7.
[368] Aarhus Convention, Article 1.

- A description of the site and the physical and technical characteristics of the proposed activity, including an estimate of the expected residues and emissions;
- A description of the significant effects of the proposed activity on the environment;
- A description of the measures envisaged to prevent and/or reduce the effects, including emissions;
- A non-technical summary of the above; and
- An outline of the main alternatives studied by the applicant;

Which means that before such administrative doings have to be formed such information, of course on the base of the *Environmental Expertise Principle.*

As can be concluded from in the text previously pointed, the aim of expertise is to establish such project (from *preliminary design* to *performing project*) that will be in accordance to the *Principle of Sustainable Development*, which means that should be used such project solutions by which there will be respected dimensioned ability of nature for self cleaning, and when we talk about the consequences for the nonrenewable resources, the right of future generations on possession of these goods.

Through years the *Institute of Environmental Expertise* had been implemented in many national legislations. For example in Italy by Decree of President of the Republic of Italy No 32' from April 15, 1971 (in connection to the air pollution), in Sweden at the year 1975, with the novelizing of the Law on the Protection of the Environment, and after that in many other states. With those implementations it came to life in the national legislations.

In International Law the *Principle of Environmental Expertise* has been implemented through many documents. In the highest measure through the previously explained Convention on Environmental Impact Assessment in a Transboundary Context, but this principle is also present inside legal beings of a great number of norms of the other conventions. For example in Article 206, supra note 4, of the Convention on the Law of the Sea[369], as well as at the Article 14, supra note 10, of Biodiversity Convention[370], formed by UN in Rio de Janeiro in 1992, and the others.

Environmental Impact Assessment Principle got relatively complete shape in June 1987, by the UNEP document: Governing Council Decision: Goals and Principles of Environmental Impact Assessment[371]. After that application of the principle has been applied at *ecos* in whole, by the Principle 17 from the "Rio Declaration', that we explained few pages before, which issue that environmental impact assessment shall be done for activities that can be estimated as significantly negative for environment. This means:

1. for the environment of the state,

2. As well for the environment across the border, and of course, also

3. On the environment as a total -- anyone element of environment.

Principle 17 clearly says that such estimating has to be done for activities for which decisions have to be done by national organs. This means: Activities defined by national legislature and in accordance with International Law norms[372].

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[369] From the year 1982, which Yugoslavia ratified at the year 1986.
[370] Biodiversity Convention, Rio 1992. See: Joldzic, V. and Milicevic, G (1995a), pp 85-87.
[371] UNEP, Governing Council Decision: Goals and Principles of Environmental Impact Assessment, Year 1987.
[372] See: Rio Declaration, Principle 17, at the Exertion of the United Nations for Better Environment in 21 Century, Appendix 1.

7.4. Sustainable (Harmonized) Use of Natural Resources Principle

This principle is also known as "*Principle of Harmonized Use of the Natural Recourses*. We do not use this name, but think that it would be more logically and linguistically correct to officially call it, in any country, *The Sustainable Use of Natural Recourses Principle*, right in the spirit of the English language, by which this principle was firstly defined. But, as in the title, we have already adopted both names of the principle, as have been done in many texts published on the English, Serbian and other languages. We shall use them for the sake of easier reading of the Serbian translation of book.

From the process of it's forming from the environmental but political idea onward this principle has been in the process of constant developing:

- Included into many *International Environmental Policy* documents as well in
- *International Environmental Law* documents concerning some of the aspects of the ecological relations, expressed by different group objects of biodiversity[373], protection of wild life[374], cultural and natural heritage[375], and the others. By this way we can think the principle has been accepted generally in the *Ecology Law*[376], and

[373] See: Biodiversity Convention.
[374] Convention on the Conservation of European Wildlife and Natural Habitats (Bern Convention), Year 1979.
[375] Convention Concerning the Protection of the World Cultural and Natural Heritage, Done at The General Conference of the United Nations Educational, Scientific and Cultural Organization meeting in Paris from 17 October to 21 November 1972, at its seventeenth session. See also Law on the Ratification the Convention Concerning the Protection of the World Cultural and Natural Heritage, *Official Journal of Yugoslavia*, Year 1974, No 8.
[376] At the level of national legislatures also. For example of Serbia, in this moment, by articles 16, 17 and 18 of the Zakon o osnovama zaštite životne sredine (Law on the Fundaments of the Protection of Nature), Year 1998.

- Applied at a number of court cases.

It is also important to know that *sustainable use of natural resources principle* is equally important for *renewable* and *nonrenewable* natural resources management and preservation.

At the level of *International Environmental Policy* this principle can be observed for the first time into *Stockholm Declaration*, under: Principles, to be more precise especially under the *Principle 21* which accentuates that "States have, in accordance with the Charter of 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 areas beyond the limits of national jurisdiction". Or to say at different way: To use natural resources under the national sovereignty according the national needs and plans but at such a way not to produce "damage to the environment of other States or of areas beyond the limits of national jurisdiction", which also means in harmony with personal needs, nature, foreign states and international space.

If we try to do deeper analyze of *Harmonized Use of the Natural Recourses' Principle* we can see its influence, or even elements, into many other principles of the Stockholm Declaration. Let us explain:

- *Principle 1* stands that "man has the fundamental right to… adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being, and he bears a solemn responsibility to protect and improve the environment for present and future generations". This automatically means that states have obligation to regulate and protect environmental quality, which also means quality of environmental (natural) resources, for actual and future generations.

- *Principle 2* literally says that “the natural resources... must be safeguarded for the benefit of present and future generations through careful planning or management, as appropriate”, thus used in harmony with nature and the needs of other subjects not only concretely observed users.
- *Principle 3* pointed that “the capacity of the earth to produce vital *renewable resources* must be maintained and, wherever practicable, restored or improved”, which is plastically explained *Harmonized use of the Natural Recourses*’ *Principle.*
- *Principle 4* pointed that man has “responsibility to safeguard and wisely manage the heritage of wildlife and its habitat”, thus the big part of live and non-alive elements of nature imperiled by many adverse factors, which needs human doings harmonized with the qualities, needs and abilities of nature,
- *Principle 5* pointes that “the non-renewable resources of the earth must be employed in such a way as to guard against the danger of their future exhaustion and to ensure that benefits from such employment are shared by all mankind”, which also can be seen as using in constant harmony with nature and the needs of other subjects not only concretely observed users.
- *Principle 6* recalls that “the discharge of toxic substances… and the release of heat must be halted in order to ensure that serious or irreversible damage is not inflicted upon ecosystems”, which also means obligation to stop un-harmonized use of natural resources and, especially, producing of irreversible damage on the natural resources,
- *Principle 7* calls states to “take all possible steps to prevent pollution of the seas by substances that are liable to create hazards to human health, to harm living resources and marine life, to

damage amenities or to interfere with other legitimate uses of the sea", which means that is the object of protection precisely determined as "seas" and that the action of which is protected is also precisely defined and also can be seen as the *un-harmonized use of the natural recourses,*

- *Principle 12* points that resources, which means all renewable and nonrenewable resources, has to be treated at the way to be available, preserved and improved, through development planning, while
- *Principle 13* indicates that States should rationally manage resources, which also means in harmony with nature,
- *Principle 17* points that "appropriate national institutions must be entrusted with the task of planning, managing or controlling the environmental resources of States with a view to enhancing environmental quality", which also can be seen as the package of government bodies, measures and tools that are necessary for the *harmonized use of the natural recourses* for the need of present and future generations and at a ways that do not produce Transboundary danger or damages, and
- *Principle 22* call states to "cooperate to develop further the International Law regarding liability and compensation for the victims of pollution and other environmental damage caused by activities within the jurisdiction or control of such States to areas beyond their jurisdiction", which precisely means:
    - To develop necessary International Environmental Law rules for the adequate use of natural resources and spaces, but also
    - To use natural resources, renewable and non-renewable, at mutually harmonized ways as well harmonized with the nature characters, needs and possibilities to handle loads.

United Nations with the *Rio Declaration* confirmed all these principal attitudes. At the start, with the Article 2 practically literary recapitulate *Stockholm Declaration* Principle 21 and pointed to states that:

- Human beings have right to live in harmony with nature (Principle 1, see also Stockholm Declaration, principles 1 and 2)
- Right to development have to meet developmental and environmental need of present and future generations (Principle 3, in harmony with the Stockholm Declaration Principle 1),
- States to achieve sustainable development should reduce and eliminate unsustainable patterns of production and (Principle 8 in harmony with the Stockholm Declaration Principle 5 and Principle 13),
- States shall enact effective environmental legislations, which means legal and sub-legal environmental acts (Principle 11 in accordance with the Stockholm Declaration Principle 13),

By such elements contributing to the Harmonized use of the Natural Recourses' Principle confirming at the International Environmental Law level, also forming the soft law elements of importance for the:

- Much more precise International Environmental Law texts, mostly conventions and annexes, legislative texts that precisely obligate States toward concretely defined objects of protections and accompanied doings, and
- National legal and sub-legal acts of environmental importance forming and putting in force.

Practically all other acts formed at the level of International Environmental Policy, for example Brundtland Report (Year 1987), Johannesburg acts (Year 2002) and the other, are environmental and

political calls for actions, not the texts that form the Ecology Law principles.

Harmonized use of the Natural Recourses' Principle also is included into precise International Law documents that form various principally formed obligations, at first place for states, of the environmental importance. Or to say at the another way, this intellectual and principal product of the law science and policy has been and is in the constant process of transforming from principally précised and presented definition, some kind of political call for states, to adequate forms of normatively set obligations for States that ratify such documents.

Chronologically observing *Harmonized use of the Natural Recourses' Principle* and analyzing one of the first examples of the *Harmonized use of the Natural Recourses' Principle* at the level of International Law implementing and transforming into applicable norms is the *Convention on International Trade in Endangered Species of Wild Fauna and Flora*[377]. Logic of the principle can be observed through the: aim, logic, protected (general) object and general task for States formulated by the norms of this Convention, especially with Articles I – VIII.

Special place at the level of the International Environmental Law possess UN Framework Convention on Climate Change, that, with the elements of Article 4, also contribute to the *Harmonized use of the Natural Recourses' Principle* transforming into normative obligations, especially with the Paragraph 1 of the Article 4, under:

- That calls States to promote sustainable management and conservation of natural values as are: biomass, forests and oceans as well as other terrestrial, coastal and marine ecosystems,

[377] Convention on International Trade in Endangered Species of Wild Fauna and Flora, agreed at a meeting of representatives of 80 countries in Washington, D.C., the United States of America, on 3 March 1973, in force from 1 July 1975.

- By which calls States to develop appropriate plans for: zone management, water resources, agriculture and for rehabilitation of areas,
- To take into account public health and the quality of the environment into plans to adapt to climate change,

Of importance also is the Kyoto Protocol[378] that sustainable development mentioned as the part of its objectives by the Article 2, paragraph 1, pointing at the:

- sustainable forest management, aforestation and reforestation [Art. 2, paragraph 1, under (ii)], and
- sustainable agriculture [Art. 2, paragraph 1, under (iii)]

Of special importance for the *Harmonized use of the Natural Recourses' Principle* transforming into normative obligations is the 1994 UN International Convention to Combat Desertification in Those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa[379], legislative convention that precise as primary goal and objective the protection of agricultural land from desertification, thus the non-harmonized use of agricultural land that leads to land degradation[380]. This Convention obliges States to combat desertification through "effective action[381]", which, legislatively speaking means:

- at the levels of legislative and administrative power,
- inside the state, and
- through the cooperation and consensus with another states,

[378] *Kyoto Protocol*, Kyto, Japan, Year 1997.
[379] UN International Convention to Combat Desertification in those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa, September 1994.
[380] Article 1 (a).
[381] Article 2, paragraph 2.

on the base of adequate norms that regulate this questions.

For third example we shall point at the Treaty on Plant Genetic Resources for Food and Agriculture[382]. Having in mind the *Harmonized use of the Natural Recourses' Principle*, for us are of special importance:

- Article 1 of the Convention that establishes *Objectives*: "the conservation and sustainable use of plant genetic resources for food and agriculture and the fair and equitable sharing of the benefits arising out of their use, in harmony with the Convention on Biological Diversity, for sustainable agriculture and food security", and
- Article 3, which defined scope: "Plant genetic resources for food and agriculture",

Also general provisions:

- at first place obligation for Parties to form regulations and provisions of importance for their obligations from Convention (Article 4), after that
- precise defining of the conservation, exploration, collection, characterization, evaluation and documentation of plant genetic resources for food and agriculture defined by the Convention (Article 5), and
- establishing the obligation of sustainable use of plant genetic resources (Article 6) which are, it is understandable, part of renewable natural resources.

Through the analyze of the place and role of the *Harmonized use of the Natural Recourses' Principle* into the Treaty on Plant Genetic Resources

[382] International Treaty on Plant Genetic Resources for Food and Agriculture, adopted by FAO Conference Resolution 3/2001 on November 3, 2001 at Rome, entry into force on June 29, 2004.

for Food and Agriculture, we can see that the Article 9 – Farmers' Rights possesses special role to oblige Parties to recognize (of course by the elements of law) that the local and indigenous communities and farmers "have made and will continue to make for the conservation and development of plant genetic resources which constitute the basis of food and agriculture production throughout the world". This Convention also recognizes the sovereign right of Parties "over their own plant genetic resources for food and agriculture, including that the authority to determine access to those resources rests with national governments and is subject to national legislation (Article 10, paragraph 1)".

Sustainable use of Natural Resources Principle at the *level of international justice* firstly had been defined during the *international litigation* between Great Britain and Iceland, that concerned the fisheries' case inside the zone that Iceland treated as his territory, and, at the same time, had been exploited by Britain, at the way that leads to permanent reduction of fishes (fishy fund) in that zone. During the litigation states had agreed to cooperate in preserving and sustainable usage of global goods, including live goods of the ocean[383]. This decision had been preceded by the Convention on Fishing and Conservation of the Living Resources of the High Seas, which treats only the fish fund of the High Sea[384].

Another excellent example is the Gabčíkovo–Nagymaros Dams Case[385], large dam project on the Danube regulated by the Budapest Treaty[386], with the aim to prevent future catastrophic Danube floods as

[383] See: Fisheries Jurisdiction - United Kingdom *versus* Iceland, Year 1974.
[384] See: Uredba o ratifikaciji Konvencije o ribolovu i očuvanju bioloških bogatstava otvorenog mora (Decree on the Ratification of the Convention on Fishing and Conservation of the Living Resources of the High Seas), Year 1965.
[385] International Court of Justice, Decision in the Case concerning the Gabcikovo-Nagymaros Barrage System, Year 1997.
[386] Hungarian Peoples Republic, Czechoslovak Socialist Republic: Treaty between the Hungarian People's Republic and the Czechoslovak Socialist Republic concerning the

well to improve river using. But only part of the project had been finished in Slovakia (Gabčíkovo Dam) while Hungary tried to suspended then to terminate the project, by such doing producing material harm to Slovakia and unsustainable using of natural resources of Danube contrary to the obligations from the Budapest Treaty and as can be seen from the extensive text of the International Court of Justice Judgment of 25 September 1997[387].

7.5. The Sustainable Development Principle

The Sustainable Development Principle has its old roots into the Trail Smelter Arbitration Convention (bilateral legislative document), which is continually in effect more than eighty years, and, on the base of this document, first Decision of the Arbitration (from the year 1938) that formulated first and also major steps toward the elements of the principal rule now known as the *Sustainable Development Principle.* It deserves to be explained.

At the British Columbia, Canada, place named Trail, from the last years of 19th century works smelter that treats heavy metals (zinc and lead). Fumes from this smelter had burden waters of rivers (Columbia Gardens, Deep Creek, Sheep Creek…) and by those rivers polluted across the state borders parts of the USA territory, also burdens, more and more through years and parallel to production growing, the air of British Columbia and the USA by the SO_2 fumes. Alas, such development had for long time produced damages. Arbitration, on the base of Convention, formed Decision that obligated Part (subject) that produced damage to pay for damage, but also to further work and develop its work with

Construction and Operation of the Gabcíkovo – Nagymaros System of Locks, Budapest, 16th September 1977.

[387] To authors knowledge this case still is an unresolved international dispute.

smaller pollutions that shell not, in future, produce damages for air, water, soil, wood, and agricultural products, as well as for humans[388].

Unfortunately this Decision for a long time has influence only at the economic developments and at the same time protection of the environmental values at the part of territories of Canada and USA. But, this have to be pointed, started the idea to principally regulate problems of economic development under the obligation not to pollute the elements of the environment.

If we analyze the elements of the mentioned Arbitration work from the start, as well the political processes that finally leaded to the internationalization of the sustainable development problems, we can conclude that *Sustainable Development Principle* has many phases of forming and developing. Precisely developing:

1. from the *simple idea* to *ideal*, then
2. from *ideal* to *bilateral* and later *international political idea*, hereafter
3. to *International Environmental Policy call*, after that
4. to the *International Environmental Policy Principle*, and
5. from *the soft law principle* and *objective* to the *element of a number of the International Environmental Law texts*, to be precise: *legislative conventions* that precisely treat their narrower or wider defined objectives one by one, as a parts of constantly increasing mosaic!

For us is of utmost importance to highlight that process of transforming from the *Sustainable Development Principle* as

[388] See in text already mentioned Trail Smelter Arbitral Tribunal Decision Reported on April 16, 1938, to the Government of the United States of America and to the Government of The Dominion of Canada, Under the Convention Signed April 15, 1935.

International Environmental Policy Principle into the *International Environmental Law Principle* is strongly expressed in a last little more than forty years. And also, but not completely simultaneously, as the *principle of national legislatures*, which can be seen in an number of constitutions, but far more as principle that had been and is still in the process of implementing in the legislatures through precise environmental norm. Firstly and mostly through the laws that regulate basic questions of the environmental protection, as well as the protection of nature (which is not the same). Above all, but not only, from the reason of human right at the healthy environment.

Sustainable Development Principle its global influence started at the year 1972nd through the number of *Stockholm Declaration* principles. At first place through the:

- Principle 11, that call states to enhance such environmental policies that "not adversely affect the present or future development potential of developing countries", and from such reason to incorporate "
- Principle 12, pointing that "resources should be made available to preserve and improve the environment", from this reason "incorporating environmental safeguards into their development planning",
- Principle 13, which call states to "adopt an integrated and coordinated approach to their development planning so as to ensure that development is compatible with the need to protect and improve environment for the benefit of their population",
- Principle 14, which defines that "rational planning constitutes an essential tool for reconciling any conflict between the needs of development and the need to protect and improve the environment", and

- Principle 15 , which reminds states that “planning must be applied to human settlements and urbanization with a view to avoiding adverse effects on the environment and obtaining maximum social, economic and environmental benefits for all”.

Second document of the global importance for the International Environmental Policy is Report to the World Commission on the Environment and Development (established at the year 1983, at the level of the United Nations General Assembly[389]), presented at the year 1987, also known as the Brundtland Report, where the process of *sustainable use of natural recourses* had been observed through the “development that meets the needs of the present without compromising the ability of future generations to meet their own needs (WCED 1987: 43)[390]”.

Third and fourth document, also of extremely importance, are the Rio Declaration, and the Agenda 21, which is annexed to the Declaration and greatly elaborates Declaration elements through forty chapters.

Rio Declaration, practically through ten principles, treats the *Sustainable Development Principle* as environmental policy principle, which can be seen at the:

- Principle 1, which proclaim that human beings posses right to a healthy environment as well as on the sustainable development,
- Principle 2, which proclaims that states have sovereign right to exploit their own resources according to their developing policies and responsibility to not damage the environment of other states,
- Principle 3 that proclaims that “the right to development must be fulfilled so as to equitably meet developmental and environmental needs of present and future generations”,

[389] On the base of the UN General Assembly Resolution 38/161 of 19 December 1983.
[390] Brundtland Report, Chapter 2, p. 43, under 1.

- Principle 4, which calls states to achieve sustainable development, and
- Principle 5, calling “states and people to cooperate in the essential task of eradicating poverty as an indispensable requirement for sustainable development, in order to decrease the disparities in standards of living and better meet the needs of the majority of the people of the world”,
- Principle 6, which proclaims that the international action shall be done in the field of environment and development according to needs of the least developed and most environmentally vulnerable states”,
- Principle 7, which proclaims cooperation between state “in a spirit of global partnership to conserve, protect and restore the health and integrity of the Earth’s ecosystem” and according to the responsibility of states to treat sustainable development in view of the pressures their societies place on the global environment, also form this reason
- Principle 8, which clearly point that, in the aim to “achieve sustainable development and a higher quality of life for all people, States should reduce and eliminate unsustainable patterns of production and consumption and promote appropriate demographic policies”,
- Principle 9, which proclaims that states should cooperate “to strengthen endogenous capacity-building for sustainable development by improving scientific understanding through exchanges of scientific and technological knowledge, and by enhancing the development, adaptation, diffusion and transfer of technologies, including new and innovative technologies”, also

- Principle 10, which proclaims that states have to form adequate rules for all the subjects to access to environmentally important information, including all such economic development information of importance for the economic development but also to adequate administrative and judicial proceedings, and that, on the base of the
- Principle 11, “states shall enact effective environmental legislation” of importance for the environmental and developmental context to which will be applied (see also Principle 13), and
- Principle 12, which indicated that “States should cooperate to promote a supportive and open international economic system that would lead to economic growth and sustainable development in all countries”, as well to
- Principle 13, which calls on developing the rules aimed for the environmental compensation, at the international and national law levels. finally by the
- Principle 27, which proclaimed that “States and people shall cooperate in good faith and in a spirit of partnership in the fulfillment of the principles embodied in this Declaration and in the further development of International Law in the field of sustainable development”.

Agenda 21, at which we also point, is important from the simple reason that calls states to implement sustainable development in national legislatures and in the International Law texts, doing so from Preamble then through all four sections and 40 chapters and at many places, threading the questions of sustainable development from many angles.

At the level of International Environmental Law *Sustainable Development Principle* have been integrated and is in process of constant development through the number of legislative treaties. Of utmost importance is the Convention for Cooperation in the Protection and

Sustainable Development of the Marine and Coastal Environment of the Northeast Pacific, that, with the Article 3 (1) (a), really precisely regulates the term and principle of the sustainable development, may be at the best ways at the level of International Environmental Law. From this reason we cite this norm:

"1. For the purposes of this Convention:

- "Sustainable development" means the process of progressive change in the quality of life of human beings, which places it as the centre and primordial subject of development, by means of economic growth with social equity and the transformation of methods of production and consumption patterns, and which is sustained in the ecological balance and vital support of the region. This process implies respect for regional, national and local ethnic and cultural diversity, and the full participation of people in peaceful coexistence and in harmony with nature, without prejudice to and ensuring the quality of life of future generations".

It is important to remind that many other conventions, although of global importance, do not so precisely define the *Sustainable Development Principle*, which can be observed, for example, from the Principle 4 of the Article 3 – Principles, of the 1992 United Nations Framework Convention on Climate Change:

"The Parties have a right to, and should, promote sustainable development. Policies and measures to protect the climate system against human-induced change should be appropriate for the specific conditions of each Party and should be integrated with national development programmes, taking into account that economic development is essential for adopting measures to address climate change".

Although such text is not precise as previously cited norm from the Convention for Cooperation in the Protection and Sustainable

Development of the Marine and Coastal Environment of the Northeast Pacific, this norm also obligates states: a.) to take into account measures that are appropriate for developing, and at the same time b.) to adequately treat climate changing problems!

Similar to previously considered legislative International Law text also is the Kyoto Protocol, its Article 2, paragraph 1, that principally obliges each state to achieve "its quantified emission limitation and reduction commitments… *in order to promote sustainable development*", at such a way regulating one of key questions necessary for sustainable developing achieving as well as maintaining.

We particularly point at the 1994 UN International Convention to Combat Desertification in Those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa[391], This legislative convention, as can be seen at the start of text, possesses as primary goal and objective the protection of agricultural land from desertification "in arid, semi-arid and dry sub-humid areas for sustainable development[392]". From this reason the objective of this convention is to combat desertification through "effective action at all levels[393]", which means:

- at the levels of legislative and administrative power,
- inside the state, and
- through the partnerships with another states and international organizations,

which also need adequate norms that regulate this questions. As can be seen observed Convention possesses precisely and narrowly targeted goal

[391] UN International Convention to Combat Desertification in those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa, Year 1992.
[392] Article 1 (a).
[393] Article 2, pargarph 2.

and assignment on the base of *Sustainable Development Principle* applying now and constantly.

Sustainable Development Principle has been implemented in many other conventions from global to regional levels. Such is, for example, so cold Carpathian Convention[394], legislative document formed with the aim to protect "sustainable social, cultural and economic development[395]" of the Carpathian and Danube Region, from this reason defining as the general objective: sustainable development[396] and establishing, also regulating, as primary goal: Conservation and sustainable use of biological and landscape diversity (by the Article 4). From this reason also regulating questions of spatial planning of influence at the protection conservation and sustainable development of the Carpathians, at the same time regulating the protection from cross-border impacts of pollutions (Article 5). This Convention also regulates problems of sustainable development connected with the:

- Integrated water/river basin management (Article 6),
- Forestry and agriculture (Article 7) as well as
- Problems of transport infrastructure for the sustainable development (Article 8),
- Tourism (Article 9),
- Industry and energy (Article 10),
- Cultural heritage and traditional knowledge (11), and

[394] Framework Convention on the Protection and Sustainable Development of the Carpathians (Carpathian Convention), signed at May 2003 in Kyiv, Ukraine, by the seven Parties: Czech Republic, Hungary, Poland, Romania, Serbia, Slovak Republic and Ukraine.
[395] Preamble, paragraphs: 2, 3, 6, 7, 8.
[396] Article 2, paragraph 1.

- Environmental assessment/information system, monitoring and early Warning (Article 12), as well as
- Public participation in decision making relating to the protection and sustainable development of the Carpathians, and the implementation of this Convention (Article 14).

As can be seen from mentioned International policy and International Law texts *Sustainable Development Principle* has the more complex *group object* than the *Sustainable Use of Natural Resources Principle*. At the same time this principle has been formed in the aim of social development, between state's borders and in the aim of global progress, not only for sustainable use of natural heritage. This is their basic *differentia specifica*.

At the year 2002 the International Law Association's Committee on the Legal Aspects of Sustainable Development released its New Delhi Declaration on Principles of International Law relating to Sustainable Development[397], by which texts notes that sustainable development is now mass implemented principle in a really big number of International Law documents, at such a way and at the same time as globally accepted objective, as well as that the law logical idea of this principle has been recognized in many national legal instruments, and at the level of jurisprudences (mostly in the Anglo-Saxon states).

7.6. Common but Differentiated Responsibilities Principle

Ideas about the ways and responsibilities for the numerous and various natural resources using, environmental loadings, over-loadings and harms, many of their different subjects and forms, had been formulated

[397] See: Resolution of the 70th Conference of the International Law Association in New Delhi, India, 2-6 April 2002.

during long times that precede some of the international conventions of global environmental importance. For example the International Convention for the Prevention of Pollution of the Sea by Oil[398], Convention on the Continental Shelf[399], Convention on Fishing and Conservation of the Living Resource of the High Seas[400] and many others. Such political consultations with the idea to somehow protect vital parts of the whole environment and protect from various pressures from undeveloped and developed countries, pressures that hit intrastate as well as international territories, had been gradually formed and, for the first time, relatively precisely expressed at the level of International Environmental Policy through the *Stockholm Declaration*, its' Principle 23, which points that "will be essential in all cases to consider the systems of values prevailing in each country, and the extent of the applicability of standards which are valid for the most advanced countries but which may be inappropriate and of unwarranted social cost for the developing countries." This definition, and at the same time political call and a warning, practically pointed that developed and undeveloped countries do not posses, in many cases, equal abilities to react at the same problems identically. We can see this as the first logical part of *Common but Differentiated Responsibilities Principle* definition that implies only the common ethical and political responsibility of Sates, not jet obligation, to protect the parts of environment and the environment as a whole, which means to protect environment at the: intrastate level, between a small number of states, but also regional, continental and global level.

Stockholm Declaration Principle 23 did not, at any way, pointed at different dimensions of environmentally negative loads from developed

[398] International Convention for the Prevention of Pollution of the Sea by Oil, International Conference on Pollution of the Sea, London (12 May 1954), amended in 1962 and 1969.
[399] Convention on the Continental Shelf, Geneva on 29 April 1958.
[400] Convention on Fishing and Conservation of the Living Resource of the High Seas.

and undeveloped States through time, thus ethically and physically different responsibilities, different from the reason of physically significantly different loads and accumulations of wastes and pollutions. This, second logical part of the *Common but Differentiated Responsibilities Principle* had been adequately formulated practically twenty years later by the *Rio Declaration* Principle 7. This principle, expressed in the moment of its forming as the *Environmental Policy Principle*, is at the same time oriented at the key elements of the *Sustainable use of Natural Resources Principle*, by its first sentence, but, what is more important, at the C*ommon but Differentiated Responsibilities Principle*, by its' second and third sentence. Let us to cite:

States shall cooperate in a spirit of global partnership to conserve, protect and restore the health and integrity of the Earth's ecosystem. In view of the different contributions to global environmental degradation, States have common but differentiated responsibilities. The developed countries acknowledge the responsibility that they bear in the international pursuit of sustainable development in view of the pressures their societies place on the global environment and of the technologies and financial resources they command.

As we can see, *Rio Declaration*, at first place, invite States to cooperate in the aim of conservation, protection and restoration of the Earth's ecosystem, but having this goal in mind clearly indicates that States do not poses equal environmental responsibilities, which stems from the simple reason of their differences in the levels of development, used technologies, dimensions of societies and un-equalities duration. This Environmental principle and call simple means that States have *environmental policy obligation* to regulate such questions on adequate legislative way. When we say: "environmental policy obligation" we point at the fact that Principle 7 of the *Rio Declaration* can be seen as *soft law norm* that is accepted from more than 192 sovereign States that

ratified this document and at such a way accepted to include it adequately in national legislatures.

We also point that the *Rio Declaration*, even more decidedly than the *Stockholm Declaration*, says that developed countries should accept responsibility, at the level of International Law -- international arrangements, starting from the facts that:

- Their societies burden global environment, and
- That they have technology and financial means[401].

In International Law C*ommon but Differentiated Responsibilities Principle*, expressed long way process of forming and developing, starting from the Vienna Convention for the Protection of the Ozone Layer[402] and its' blanket text: Montreal Protocol[403], as well as Amendments made on the Protocol (from 1990 to 1999). Amendments that greatly helps defining and regulating responsibilities of states for the *ecos* element's pollution, as well as their differences in responsibilities. This from one simple reason: Types, levels and values of pollutions from undeveloped countries are not even approximate to the pollutions from developed countries. Consequently, their responsibilities have not been equal in any way. This aspect of responsibility does not treat their responsibility based on the norms of Civil Law responsibilities for the harm compensation, but treat responsibilities of states in accordance with their burdens of nature. What is said is, for example, obvious from the Article 3 of the Convention on Climate Change, its supra note 1, which prescribe that Sides have obligation to protect climate system for the well-being of common and future generations of Mankind, at the base of equality and in accordance with their common, but differentiated,

[401] Principle 7, Rio Declaration, 1/II, in *Exertion of the United Nations for Better Environment in 21 Century*.
[402] Vienna Convention for the Protection of the Ozone Layer, Year 1985.
[403] The Montreal Protocol on Substances that Deplete the Ozone Layer, Year 1987.

responsibilities and possibilities. In accordance, developed countries, as the Sides, are responsible to have leading rule in struggle with climate change and their negative consequences[404].

7.7. Non-Discrimination between States Principle

The essence of *Non-Discrimination between States Principle* possesses long roots, which elements can be divided into three categories, as the elements from the:

- Environmental Policy,
- Environmental Law, and
- Justice decisions that contribute to the Environmental Law developing.

First steps into *Non-Discrimination between States Principle* forming can be observed long ago in the so cold Trail Smelter Case (United Sates *versus* Canada)[405], that we already mentioned at the previous pages[406].

For us this case is of special importance from seven reasons:

1. This arbitrational case had been based on the bilateral agreement which as Parties had defined States[407], precisely the: United States of America and the Dominion of Canada, and,
2. As representatives of Parties, their Governments[408],

[404] See: United Nations Framework Convention on Climate Change, 2/III, in *Exertion of the United Nations for Better Environment in 21 Century*.
[405] Trail Smelter Case (United States *versus* Canada). 16 April 1938 and 11 March 1941. Volume III pp 1905-1982.
[406] See more under: 7.5.
[407] See: Convention for Settlement of Difficulties Arising from Operation of Smelter at Trail, Year 1935.
[408] See especially articles of Convention under number: I, II, VI, VII, XI, XII and XIII.

3. This had been defined as the case that treats specific Violation of Sovereignty[409],
4. This had been the first such case in which had been economic developing connected with the environmental conservation and recovery[410],
5. Case in which the object(s) that had been hit had been defined as: trans-boundary waters and air and by them lands also[411],
6. Arbitrational case in which as the (long time) producer of damages had been defined smelter firm (at the small town Trail, Canada), and
7. Arbitrational case in which as specifically (physically) affected had been defined physical and artificial persons of law, at the other side of state border, as producers whose production depends on the quality of used waters, lands, and air.

Having in mind that pollution affected state borders of USA and after that water, air and land at the sovereign territory, Arbitration possessed needed and enough International Law elements to treat such case, which real parts are private actors but not states. This from the simple reason that:

- Every sovereign state is under obligation to protect borders, and also
- To protect from all the dangers, as well possible and real negative effects that can hit across the borders of State.
- By such a way states are also under the obligation to protect:

[409] See: Trail Smelter Case, Decision of April 16, 1938:Violation of sovereignty, under No 7, at p. 1940, and Damages under violation of sovereignty, p. 1955.
[410] Long time work of smelter at the small town Trail, British Columbia, Canada connected with the qualities of trans-boundary waters and air.
[411] See Trail Smelter arbitral Tribunal. Decision reported on April 16, 1938.

- All the physical and artificial persons of law under its sovereignty and jurisdiction, but also
- Their property and legal economical and other works!

Contrary to popular opinion, as we just explained, *Non-Discrimination between States Principle* had got its basic elements long ago, not from the *Environmental Policy Principle* formed by the *Stockholm Declaration*, but with the work at the level of:

- International legislative law text elements (rules),
- Work of Arbitration, formed with this text (Convention for Settlement of Difficulties Arising from Operation of Smelter at Trail), and
- Arbitration's results as justice complements to existing law knowledge and principles.

This principle is expressed in the rule that any state has no right to do anything to transfer pollution from national onto territory of some other state, by this expressing itself as subject that has more rights. At the other word, when is in question doing of action, or actions, that produce pollution consequences at the territories under the foreign sovereignty, it is clearly defined that do not exist legal possibility for some state to do act that is for the other state forbidden, and by that way to express discrimination between states.

We also have to point developing path of the *Non-Discrimination between States Principle* at that the level of *International Environmental Policy* that really started with the UN work on the Stockholm Declaration principles. For us in this moment of special importance for the *Non-Discrimination between States Principle* explaining, at the level of *International Environmental Policy*, is Stockholm Declaration's Principle 21, which reminds that "States have, in accordance with the Charter of 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 areas beyond the limits of national jurisdiction". This Principle 21 had been confirmed by identical Principle 2 of the Rio Declaration, at the year 1992. After that observed principle had been implemented in a number of International Environmental Law documents, of explicit legislative importance, at the global and lower levels. Let us to present some explanations and examples.

This principle, in earlier times expressed through a small number of bilateral contracts, has been raised, practically for the first time, at the level of International Law at the year 1963, by the Article 2 of the Vienna Convention on Civil Liability for Nuclear Damage[412]. It is clear: When is in question pollution produced by radioactive material. After this document application of the principle has been broaden on protection from civil damage made by oil pollution, with the Convention on Civil Liability for Oil Pollution Damage (1969)[413], as well as with Protocol (1976) of this Convention.

For broadening of the object (grammatical, object of the attack, and object of the protection) embraced by *Non-Discrimination between States Principle*, in the last nearly thirty years, from the highest significance is Basel Convention[414]. Articles 12 and 14 bring up obligation for states to formulate and apply the Protocol on Civil Liability and Compensation for

[412] See: Vienna Convention on Civil Liability for Nuclear Damage, 21 May 1963 as well as Zakon o ratifikaciji Beče konvencije o građanskoj odgovornosti za nuklearne šete (Law on Ratification of the Vienna Convention on Civil Liability for Nuclear Damage) from the year 1977.
[413] See: Uredba o ratifikaciji međnarodne Konvencije o građanskoj odgovornosti za štetu pričinjenu naftom (Decree on the Ratification of the International Convention on Civil Liability for Oil Pollution Damage), Year 1977, as well as Joldzic, V. and Milicevic, G. (1995a), p. 70.
[414] Signed by Yugoslavia at the 22 March 1989.

Damage from Transboundary Movements of Hazardous Wastes and Their Disposal. Of special importance also is the Convention on Civil Liability for Damage Caused during Carriage of Dangerous Goods by Road, Rail and Inland Navigation Vessels[415]. One of the newest international contracts, which widen object treated by the non-discrimination principle, is the Convention on Protection and use of Transboundary Watercourses and International Lakes[416]. Of special importance are:

Article 2, which treats problem of transboundary "attack", and

Article 7[417], which regulates the matter of responsibility, in accordance by non-discriminating principle.

This Convention at the continental watercourses applies what is, by *Non-Discrimination Principle,* implemented into the Convention on the Law of the Sea[418], for states. Precisely, the Convention on the Law of the Sea prescribes the obligation for states to formulate and bring into forces sea pollution prevention acts (Article 194). Actually, from:

1. Continental sources (Article 207),
2. Different activities at the zone of possible pollution (Article 209),
3. Ships (Article 211), as well from
4. The air, or by the air as medium (Article 212).

The implementation, into Yugoslav and Serbian legislature, of the articles concerning the civil-right relations, between them relations

[415] Document have been officially formed at the 10 October 1989, but is not jet in force.
[416] Convention on Protection and use of Transboundary Watercourses and International Lakes, UN Economic Commission for Europe, Helsinki, 17 March 1992.
[417] Wider explanations about this see at: Popovic, S. (1996).
[418] United Nations Convention on the Law of the Sea (UNCLOS), Montego Bay, Jamaica, 10th December 1982.

produced by pollution prohibited by the Convention has been done by the Federal Law Concerning the Sea and Inside-borders Navigation[419].

By this Convention, in essence, we have to emphasize, have gotten into life, as the element of the International Law, principle well known from the Roman Empire Law: *Sic utere tuo ut alienum non laedas*[420], got into life much before this had been proposed by Tautenberg Jonson text: The International Law -- Some Basic Viewpoints.

Into little more than last 25 years this principle had been included into many other conventions of global importance. To mention, for example, the Convention on Biological Diversity, which, through the:

Article 3 - Principle, prescribes to Parties of this Convention that

"States have, in accordance with the Charter of 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 areas beyond the limits of national jurisdiction", and also, by the

Article 4 - Jurisdictional Scope, that Sates will "the provisions of this Convention apply, in relation to each Contracting Party:

- (a) In the case of components of biological diversity, in areas
- within the limits of its national jurisdiction; and
- (b) In the case of processes and activities, regardless of where their effects occur, carried out under its jurisdiction or control, within the area of its national jurisdiction or beyond the limits of national jurisdiction".

[419] Federal Law Concerning the Sea and Inside-borders Navigation of Ex-Yugolsavia.
[420] Latin sentence that means: "Use your property and do not injure neighbors."

Also is important the Convention on environmental impact assessment in a transboundary context[421], which regulates questions of importance for evaluating the likely impact of a proposed activity, on the environment, especially across the state-border or borders, from this reason obliging states to take necessary legal and the other measures to reduce and control adverse trans-boundary effects (Article 2, paragraph 1 and 2), and to cooperate and consult Parties that can be hit with such negative effects (Article 2, paragraph 4 and 5, Article 3), which especially means obligation to consult possible affected party (Article 5 in connection with the Article 4).

As can be seen from this short analysis an few examples, *Non-Discrimination between States Principle* from year to year gets into life more and more, on such way that the number of group objects concerning the *Ecology Law* relations, on which this principle has been honored, raises.

[421] The Convention on Environmental Impact Assessment in a Transboundary Context, United Nations Economic Commission for Europe (UNECE) convention, signed in Espoo, Finland, Year 1991.

CHAPTER 8

PRINCIPLES OF IMPORTANCE FOR LEGAL STATUS OF NATURAL RESOURCES AND COMMON AREAS OF MANKIND

8.1. Generally about Legal Status of Natural Resources and Common Areas of Mankind

In our thinking about legal treatment of goods that are constitutive elements of the *ecos* as entity, we have no freedom to forget that:

- Some of them are located between borders of sovereign states, and that
- Some other goods are placed across borders, at territories of two or more states, which means that from this reason such goods cannot be treated only and exclusively as national goods of one nation.
- Really big parts of natural resources are not placed only between borders of states, or across them, but at the:
    - Also at the international area also, or only at the
    - International area.

These facts also leads *Contemporary Law* toward question who is the right holder[422] of property over natural resources: Live generations only, or the *titulus* is men as human species? This means: Only present generations or the future generations also? At few last years we have gotten practically identical answers thorough many International Law documents. By these documents have been handed supports for the:

1. Permanent Sovereignty over Natural Resources Principle,
2. Shared Natural Resources Principle,
3. Common Heritage of Mankind Principle, and
4. Inter-generational equity in rights and responsibilities.

We shall start our reflections with the inter-generations' equity in rights and responsibilities.

8.2. Principle of Inter-Generational Equity in Rights and Responsibility

As we explained at the front pages of this book, one of the key questions of the Ecology Law is: Who is the general right holder, actual generation or all the human generations, which practically means: Previous generations, actual generation and future generations? Of utmost importance for the Ecology Law is to adequately answer at this question. Especially if we want to form adequate answer, appropriate for our specific task, what is the essence and role of the *Principle of Inter-generations Equity in Rights and Responsibility*? From this reason also is desirable to observe possible levels of its forming and applying.

Although the initiation of the idea about the inter-generational equity in rights and responsibility can be find in numerous philosophical and law

[422] L. *Titulus.*

doctrines and approaches, for the topic of our work may be observed, as the first practically important for the *Environmental Policy*, one element of the *Charter of the United Nations* – its first sentence that literary said: "We the peoples of the United Nations determined to save succeeding generations from the scourge of war".

Previous statement logically and practically means that the founders of the United Nations form joint political position, of law legislative importance too, that future generations also have to be observed and accepted as right holders – holders of the right on life in peaceful World. This sentence can be observed as the *General Law Policy* statement.

But what "peaceful World" from this *General Law Policy* statement also means? Certainly, the environment that is not under the stresses of war dangers, damages and destructions, hence not under the environmentally negative influences of any war.

As we can see from this short analyze, humans, precisely all generations, future also, possess right on the environment adequate for normal life without possible dangers and/or damages and destructions. This is practically the first political statement of the United Nations Charter which is also of utmost law importance!

At this place, having in mind the United Nations Charter, we have to remind that to the moment of its forming Classical Law knowledge defines that man enjoys all his rights during his life, as the living right holder. Therefore, without life, he cannot enjoy his rights either. It implies that the future generations, as an abstract notion, not the existing phenomenon, cannot have any right, including the right(s) from the *Ecology Law*.

We, as many other jurists, consider classical attitude as the incomplete, thus wrong one. *Homo sapiens* is not only the sum of living persons, but specific *biological species*, which means that it includes not only living

examples but ancestors and future generations also, what can be seen from the first sentence of the United Nations Charter. This legal position had been confirmed and further developed as the precise legal position of the Genocide Convention[423], which regulated that negative doings during the war while affect the living, also affect still unborn members of human society[424]. And talking about genocide, we should mention that genocide also can be produced by the attacks at the men's environment[425]. This statement is of obvious importance for the *Law of War*, at the first place, but not only for it!

Principle of Inter-generations Equity in Rights and Responsibility started in *International Law Policy*, and, nearly 70 years ago, through the *Law of War*, at such a way also forming its place into *soft law* of environmental importance. But, from its forming to the *Environmental Policy* refinement passed many years, precisely to the *Stockholm Declaration* forming. If we analyze *Stockholm Declaration* we can find the elements that are:

- Not of apparent but still are of strong influence at the *Inter-Generations Equity in Rights and Responsibility*, and
- Of direct, evident, we can also say: Literal influence at the *Inter-Generations Equity in Rights and Responsibility Principle* forming, at the level of *International Environmental Policy*.

I - If we analyze *Stockholm Declaration*, it is not so apparent, but we can still see parts of influence at the *Inter-Generations Equity in Rights and Responsibility* at the Preamble and its' proclamations, literary that:

[423] The Convention on the Prevention and Punishment of the Crime of Genocide (CPPCG), from the Year 1948, entered into force on 12th January 1951.
[424] See: Article II, paragraph 1, under: (c) and (d) of the Convention on the Prevention and Punishment of the Crime of Genocide.
[425] Ibid, Article 2 under (c).

1. *Declaration of the United Nations Conference on the Human Environment* proclaims that "Man is both creature and moulder of his environment, which gives him physical sustenance", also that "both aspects of man's environment, the natural and the man-made, are essential to his well-being and to the enjoyment of basic human rights the right to life itself[426]". Of course, word "man" in this logical construction is used without any pointing at the present human generations only, which means that can be observed as of importance for all generations: historical, present and future!

2. *Stockholm Declaration* as the *Environmental Policy text* also point at the fact that "the protection of human environment is a major issue which affects the well-being of peoples and… the duty of all Governments[427]".

3. "Man has constantly to sum up experience and go on discovering, inventing, creating and advancing… to transform his surroundings" to "bring to all peoples the benefits of development and the opportunity to enhance the quality of life", having in mind that "wrongly or heedlessly applied, the same power can do incalculable harm to human beings and the human environment[428]".

4. In our time had been reached point in human history "when we must shape our actions throughout the world with a more prudent care for their environmental consequences" and "achieve for ourselves and our posterity a better life in an environment more in keeping with human needs and hopes", which means that "man must use knowledge to build, in collaboration with nature, a better… human environment for present

[426] Declaration of the United Nations Conference on the Human Environment, so cold Stockholm Declaration, Preamble, under 1.
[427] Ibid, under 2.
[428] Ibid, under 3.

and future generations (which) has become an imperative goal for Mankind[429]".

II. - Of direct and most obvious influence at the *International Environmental Policy* and forming of the *Inter-Generations Equity in Rights and Responsibility Principle* are first three "principles" as well as fifth "principle" from the *Stockholm Declaration*.

Principle 1 literally proclaims that "man has: the fundamental right to freedom, equality and adequate conditions of life", also "responsibility to protect and improve the environment for present and future generations", while

Principle 2 clearly defined that "the natural resources of the earth, including the air, water, land, flora and fauna and especially representative samples of natural ecosystems, must be safeguarded for the benefit of present and future generations through careful planning or management, as appropriate".

But we also have logical duty to accept the obligation from *Principle 3*, which defines that "the capacity of the Earth to produce vital renewable resources must be maintained and, wherever practicable, restored or improved", obviously as the values that belongs not only to actual human generations but also to our descendants.

Principle 5 of *Stockholm Declaration* call Mankind, states especially, to accept that "the non-renewable resources of the Earth must be employed in such a way as to guard against the danger of their future exhaustion and to ensure that benefits from such employment are shared by all Mankind". From text is easy to understand that the danger of future exhaustion of non-renewable resources have to be avoided, thus danger for future human generations also.

[429] Ibid, under 6.

As we can see *Stockholm Declaration* proclaims that man has responsibility to insure and improve the elements of the environment for present and future generations, but not only with its' Principle 2, as can be seen from most of the texts that mention *Principle of Inter-Generations Equity in Rights and Responsibility*.

From this moment *Principle of Inter-Generations Equity in Rights and Responsibilities* has been included in majority of the *Environmental Policy documents*, such is the United Nations General Assembly Resolution on the Historical Responsibility of Nature for the Benefit of Present and Future Generations, formulated by the UN General Assembly[430]. After that observed *Principle of Inter-Generations Equity in Rights and Responsibilities* had been approved as the *International Environmental Policy Principle* with the Principle 3, supra note 5 of the Rio Declaration, text which proclaimed that "right for development has to be used on such a way to meet necessities of present and future generations". With this *soft legal construction* located into Rio Declaration general object of inter-generations' equity in rights and responsibilities had been broadened from single group objects, that before this document had been treated by some conventions, on the *ecos* as a whole, in accordance with the Stockholm Declaration and the posterior documents, by which this principle of inter-generations' equity has been really institutionalized at the level of *International Environmental Policy*, but also transformed into soft law principle, and at such a way started processes of national legislatures adaptations according to Rio international environmental policy calls.

Principle of Inter-Generations Equity in Rights and Responsibilities can be observed at the *legislative levels*, level of the *International Public Law*, especially *International Environmental Law*, as well at the levels of national legislatures.

[430] See: United Nations General Assembly Resolution on the Historical Responsibility of Nature for the Benefit of Present and Future Generations (October 1980).

At broader, *International Public Law* level, concept of *Inter-Generations Equity in Rights and Responsibility Principle* can be observed nearly sixty years ago, although not so named, at the Antarctic Treaty[431], legislative convention of global importance, which regulated relationship toward the Antarctic continent as demilitarized zone. Zone that has to be preserved for scientific research, but, what is of special importance, convention that also prohibits:

- Testing of any types of weapons (Art. 1, paragraph 1), and
- Nuclear explosion and disposal at this continent (by the Article V),

at such a way preserving it for right holders, states at first place, as well for actual and future generations.

After the Antarctic Treaty *Inter-Generations Equity in Rights and Responsibility Principle* had been applied at much wider level and more or less contemporaneously, not only with the *Stockholm Declaration* formal presenting, but through a number of legislative conventions of direct environmental importance. For example:

1. The 1972 London Ocean Dumping Convention[432], which established continual controls for dumping of hazardous and nuclear wastes, but also another unwonted materials, in the marine environment [Article I, IV and XII under (a) finally (f)], at such a way providing the marine environment quality for actual and future generations. It is important to point that this legislative text also implements *Precautionary Principle* for mans relationship towards marine environment.

[431] The Antarctic Treaty, signed in Washington on 1 December 1959.
[432] Prevention of Marine Pollution by Dumping of Wastes and Other Matter (London Convention), Year 1972.

2. Convention Concerning the Protection of the World Cultural and Natural Heritage[433], which had been formulated with the clear aim to protect cultural and natural heritage, as can be seen from the Article 1 and 2, and duty (Article 4) to "each State Party" to ensure "the identification, protection, conservation, presentation and transmission to future generations of the cultural and natural heritage".

3. The 1973 Convention on International Trade in Endangered Species, that had been formed to especially protect endangered species as biological (which also means: environmental values) that have to be protected *in continuum*, which also law-logically means to be protected for actual and future generations as right holders of the all environmental values.

4. The Convention on Long-Range Transboundary Air Pollution[434], which, by the Article 2, prescribed obligation to Parties "to protect man and his environment against air pollution", which means to protect as continual value of present and future generations.

5. Convention for the Protection of the Ozone Layer, which (by the Article 2, paragraph 1) obligated Parties to "take appropriate measures in accordance with the provisions of this Convention and of those protocols in force to which they are party to protect human health and the environment against adverse effects resulting or likely to result from human activities which modify or are likely to modify the ozone layer", of course as the value of importance for humans, this means not only actual generations.

[433] Convention Concerning the Protection of the World Cultural and Natural Heritage, 16 November 1972.
[434] The Convention on Long-Range Transboundary Air Pollution, opened for signature on the year 1979.

6. Montreal Protocol on Substances that Deplete the Ozone Layer, legislative construction that continually contributes to the protection established by the Vienna Ozone layer Convention, thus also to the *Inter-Generations Equity in Rights and Responsibility Principle*.

7. Climate Change Convention[435], that is literally oriented "on protection of global climate for present and future generations of Mankind[436]", from this reason regulating (by the Article 3, paragraph 1) that "the Parties should protect the climate system for the benefit of present and future generations of humankind, on the basis of equity and in accordance with their common but differentiated responsibilities and respective capabilities", at such a way establishing principled approach to continual protection of the environment, accordingly to the common but differentiated responsibilities and respective capabilities of State parties.

As can be seen and concluded from presented examples, *Principle of Inter-Generations Equity in Rights and Responsibility through the time evaluated from the political idea to environmental policy principle,* then into the *principle of the International Environmental Law and its legislative conventions*. This principle had been formed having in mind that:

- Human population always produce environmentally negative effects that also affect future generations, and that
- The need to protect natural and by human works formed values is of utmost and constantly grooving importance.

Man has ethical but also legal obligation to protect environmental values not only for present but also for future generations.

[435] See: United Nation Framework Convention on Climate Change (May 1992).
[436] See: United Nations Framework Convention on Climate Change (1992).

8.3. Principle of Permanent Sovereignty over Natural Resources

Idea of Permanent sovereignty over natural resources as the environmental principle ensued from the idea and elements of the *International Law Principle of States' Sovereignty*. As such this idea had started from the broader idea concerning territorial sovereignty. Every sovereign state on the state's territory possesses entirely law based right of the:

- Legislative power,
- Power to put on trial, and
- Executive power.

This automatically means that, as the legal state, beginning from concept of law legality and legitimacy, in the name of people who possess democratic power, State brings laws and conducts it in life, at the same time regulating and protecting rights of citizens, as well as of the all other subjects of law[437]. From there states also bring laws by which treat natural resources. In the other words: States express sovereignty above them.

Principle of Permanent Sovereignty over Natural Resources as the *International Environmental Policy Principle* practically started long years ago with the idea that nations possess right to exploit freely their natural wealth and resources[438], ten years after evolved into the Permanent Sovereignty over Natural Resources Resolution[439]. Shortly after that this idea also had been elaborated in detail by another General

[437] At first place: Artificial persons, but also of the other states, as a specific kind of artificial persons, with rights and duties regulated preferably on the base of the International Law.
[438] See: UN Resolution 626 (VII) - Right to Exploit Freely Natural Wealth and Resources, of 12 December 1952.
[439] UN General Assembly Resolution No 1803 (XVII) - Permanent Sovereignty over Natural Resources, of 14 December 1962.

Assembly Resolution on the Permanent Sovereignty over Natural Resources[440], and after that included, practically parallel, in a number of the *International Environmental Policy* and *International Environmental Law* dcuments.

General Assembly resolution 1803 (XVII) - Permanent sovereignty over natural resources, of 14 December 1962, for us is of special importance from the simple reason that literally declares that:

1. The right of peoples and nations to permanent sovereignty over their natural wealth and resources must be exercised in the interest of their national development and of the well-being of the people of the State concerned.

2. The exploration, development and disposition of such resources … should be in conformity with the rules and conditions which the peoples and nations freely consider to be necessary or desirable with regard to the authorization, restriction or prohibition of such activities.

3. Nationalization, expropriation or requisitioning shall be based on grounds or reasons of public utility, security or the national interest

4. The free and beneficial exercise of the sovereignty of peoples and nations over their natural resources must be furthered by the mutual respect of States based on their sovereign equality.

5. Violation of the rights of peoples and nations to sovereignty over their natural wealth and resources is contrary to the spirit and principles of the Charter of the United Nations and hinders the

[440] XXIII General Assembly Resolution No 2386 – Permanent Sovereignty over Natural Resources, 1723rd plenary meeting, 19 November 1968, New York.

development of international co-operation and the maintenance of peace[441].

Principle of Permanent Sovereignty over Natural Resources after that evolved through the Stockholm Declaration *Principle 21*, and then had been included, practically parallel, in a number of the *International Environmental Policy* and *International Environmental Law* documents.

Stockholm Declaration *Principle 21* proclaim that "States have, in accordance with the Charter of 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 areas beyond the limits of national jurisdiction". Rio Declaration, by the Article 2, literally confirmed this principle but also enlarge by the logical construction that states possess sovereign right to exploit their own resources pursuant to their own environmental but also *developmental* policies.

Principle of Permanent Sovereignty over Natural Resources through years evolved from political call and principle into the *International Environmental Law Principle*. This can be seen many years before the environmental policy Rio documents. For example the UN Convention on the Law of the Sea[442] defined territorial waters at 12 miles vide from the coast (Article 3), but also regulated many other questions:

- At first place of 200 nautical miles economic zone dimension (Article 57 - Breadth of the exclusive economic zone) of importance for States, and

[441] Which elements of the General Assembly resolution 1803 (XVII) had been reaffirmed by the UN Resolution 2158(XXI) of 22 November 1966, under 1.
[442] The United Nations Convention on the Law of the Sea (UNCLOS), third United Nations Conference on the Law of the Sea (UNCLOS III), Montego Bay, Jamaica, 10th December 1982.

- Connected with relationships toward a number of environmental values and duties (articles: 7, 35, 36, 56, 57, 58, 61 - 69).

Just before the Rio Summit, UN adopted (at the 9th May 1992) the so cold Convention on Climate Change[443]. For us of special importance is its Article 3 – Principles, that call State Parties to "protect the climate system for the benefit of present and future generations of humankind, on the basis of equity and in accordance with their common but differentiated responsibilities and respective capabilities".

Needs and aspirations of present as well of future generations and legislative approach to this questions also can be precisely seen from the Convention on Biological Diversity Article 2, as example. This Article, regulating the approach towards sustainable use of renewable natural values, literary said that "the use of components of biological diversity in a way and at a rate that does not lead to the long-term decline of biological diversity, thereby maintaining its potential to meet the needs and aspirations of present and future generations[444]".

8.4. Principle of Shared Natural Resources

Beside numerous goods, which are placed inside state sovereign borders, it is indisputable fact that there are natural resources that go across the borders. This is the case with: Transboundary watercourses, lakes and underground waters, oil fields, diverse minerals and the other natural goods. From such reasons states and International Community have necessity to form rules for their joint use, by two or more states. Such rules had been formed through the *International Environmental Policy* efforts and transformed into law proposals, later the elements of

[443] United Nations Framework Convention on Climate Change (1992).
[444] Convention on Biological Diversity, Article 2, paragraph 1, 16 passage.

International Law documents, formed by norms of the bilateral, trilateral and, lately, through multilateral agreements.

In some texts, firstly at the level of *International Environmental Policy Level*, *Principle of Shared Natural Resources* had been declared for the natural goods in general. This is case with the Charter of Economic Rights and Duties, from the year 1974[445], which says that in exploitation of natural resources states have to cooperate, in aim of the all natural resources using without causing any damages for legitimate interest of the other states[446], also with the supra note 44 at Principle 3 (Duty to avoid harm) of UNEP Principles for Shared Natural Resources[447].

Another good example at the *International Environmental Policy* level, which we also have to take into account, is more than 40 years old UN Resolution 27/2997, of 15 December 1972, by which had been established necessary elements for the United Nations Environment Programme (UNEP) forming and work, as well as one of UNEP first results, so cold UNEP Draft Principles[448], which call States on harmonious and utilitarian use of shared natural resources. Resources that spread across the borders (Principle 1) and in this aim to conclude mutual agreements (Principle 2) having in mind "that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction (Article 3)", also calling States to adequately cooperate (Principles: 3 - 7).

[445] UN Charter of Economic Rights and Duties, 12 December 1974.
[446] See: Charter of Economic Rights and Duties, Chapter II, Article 3.
[447] See: General Assembly Resolution 1803, 14 December 1962, as well as Hunter D., Sommer, J. and Vaughan, S. (1974) Concepts and Principles of International Environmental Law: An Introduction, p. 38.
[448] Draft Principles of Conduct in the Field of the Environment for the Guidance of States in the Conservation and Harmonious Utilization of Natural Resources Shared by two or more States, Year 1978.

If we further analyze problems of *Shared Natural Resources Principle*, we can see its' transformation from the *International Environmental Policy* level into the principle at the *International Environmental Law* level. At such a way some documents of *International Ecology Law* this principle bound to concrete group object. Good example is the Convention on Transboundary Lakes and Watercourses[449]. The reason of this parallel access in elaborating the *Shared Natural Resources Principle* through *an general* defined access to object, lies in the necessity to make deeper, which means more precise regulations, aimed for the establishing qualitative normative creations, which are going to regulate relationship between states, in using strategic natural goods, like are transboundary waters.

Another similar but at the same time broader *International Environmental Law* legislative text is the Convention on the Law of the Non-Navigational Uses of International Watercourses[450], which had been formed and adopted for the scope that contains "measures of protection, preservation and management related to the uses of those watercourses and their waters (Article 1)". Primary obligation for State Parties is not to cause significant harm to another state (Article 7). From this reason also to cooperate in the aim of mutual benefit (Article 8). Especially in the case when one of Parties wants to do something that can produce harm at foreign State territory (Article 17), as well as in urgent situations (Article 19). State Parties are under clear obligations of the protection and preservation of ecosystems (Article 20) and also prevention, reduction and control of pollutions (Article 21) accordingly to generally accepted international rules and standards (Article 24). States are under the constant obligation to prevent harmful conditions (Article 27) and react in

[449] Convention on Protection and Use of Transboundary Watercourses and International Lakes. Document: I.L.M. 1392 [1992]. Helsinki, on 17 March 1992.
[450] Convention on the Law of the Non-Navigational Uses of International Watercourses, UN General Assembly, Fifty-first session, 11 April 1997.

emergency situations, especially if such situation can hit foreign territory (Article 28).

8.5. Common Heritage of Mankind Principle

As any law principle, *Common Heritage of Mankind Principle* possesses long routs. First steps toward such idea can be observed in the freedom of the seas idea, which presented Dutch jurist Hugo Grotius at the year 1609 through legal doctrine observing the seas and oceans as *Mare Liberum* – Latin title that have to be translated as "Freedom of Seas" and scrutinize sea and oceans waters beyond the borders of states as free and common heritage that can use any ship for peaceful doing. This text practically had formed the idea of unlimited freedom of the seas, idea that evolved, practically at the middle of 20th century, into idea of limited freedom of seas. Reason for such transforming may be lies into two World wars sea problems that hit warring and un-warring parties, but continued to develop from another reasons also.

If we have in mind the idea of sovereignty, as well as the limits of national sovereignty, we also can formulate applicable idea and view about the common heritage of Mankind[451].

I - Full national jurisdiction and sovereignty spreads over:

- Land inside borders of State (surface and undergrounds),
- Internal waters (inside borders), which also includes:
    - Seabed inside national borders, but also
    - Airspace over national land and waters territory, and
    - Continental shelf underground[452].

[451] Having in mind the elements of the United Nations Convention on the Law of the Sea, from the year 1982.

II – Restricted national jurisdiction and sovereignty spreads over:

- Airspace over
  - Territorial waters and
  - Contiguous zone airspace,
- Waters of exclusive economic zone, and
- Land, but at the continental shelf surface and
- Extended continental shelf underground
- Contiguous zone - over the sea beyond the territorial waters but within a distance of twenty-four nautical miles (~44 km) from the baselines.

III – Out of national jurisdiction and sovereignty are:

- International airspace,
- International waters, especially:
  - International waters surface, and
  - International seabed surface.

Starting from previous explanation it is clear that *common heritage of Mankind* includes listed values that are out of national space and jurisdiction. But what can be said about the environmental values? We know that such values are present at the international waters and its depts.

More than sixty years ago, with the Convention for the Protection of Cultural Property in the Event of Armed Conflict[453] had been clearly expressed idea and request to protect cultural property from war dangers,

[452] Exploitation of mineral resources in the extended continental shelf is reserved right for the coastal state, according to the Article 76 and 77 of the UN Convention on the Law of the Sea.
[453] Convention for the Protection of Cultural Property in the Event of Armed Conflict, Hague, 14 May 1954.

at the start of text treating cultural values as values that belong to every people [Article 1, paragraph 1, under (a)], establishing the obligation of cultural property protection (Article 2), especially cultural property safeguarding obligation (Article 3).

Another good example of the *Common Heritage of Mankind Principle* is the Article VI of the Antarctic Treaty[454], which established the zone of application of the treaty under *International Law* and at the high seas also.

Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, Including the Moon and Other Celestial Bodies[455], if we observe through the time, is third good example of *Common Heritage of Mankind Principle*, as can be seen from the Articles I – IV.

Article I defined that the outer space, "including the Moon and other celestial bodies, shall be carried out for the benefit and in the interests of all countries, irrespective of their degree of economic or scientific development, and shall be the province of all Mankind",

Article II literally said that "Outer space, including the Moon and other celestial bodies, is not subject to national appropriation by claim of sovereignty, by means of use or occupation, or by any other means",

Article III call States to "carry on activities in the exploration and use of outer space, including the Moon and other celestial bodies, in accordance with international law, including the Charter of the United Nations, in the interest of maintaining international peace and security and promoting international cooperation and understanding", while

Article IV call States Parties to the Treaty to use orbit around the Earth as well celestial bodies and Moon only for peaceful purposes.

[454] See: Antarctic Treaty, Art. VI., 1 Dec. 1959, at 12 U.S.T. 794, 402 U.N.T.S. 72.
[455] Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, Including the Moon and Other Celestial Bodies, 27 January 1967.

We also point that Convention on International Liability for Damage Caused by Space Objects[456] recognizes "the common interest of all Mankind in furthering the exploration and use of outer space for peaceful purposes (Preamble, first sentence)", thus for Mankind.

Convention for the Protection of the World Cultural and Natural Heritage[457] treats world cultural and natural heritage. To be precise: All the internationally recognized values that can be observed as natural (Article 2), or cultural - produced by human doings (Article 1). Also formed duty to each State Party to identify, protect and do conservation of all such values (Article 4) and pointed duty for "the States Parties… to… recognize that such heritage constitutes a world heritage for whose protection it is the duty of the international community as a whole to co-operate. (Article 6, paragraph 1)". Or to say at another way, to protect such values as the common heritage of Mankind!

At the year 1972 also had been formed the:

- International Maritime Organization Convention on the Prevention of Marine Pollution by Dumping Wastes and Other Matter[458] and the
- London International Convention for the Prevention of Pollution from Ships[459],

two *International Law* legislative texts of global importance that regulate concrete questions and problems of unwonted sea pollutions from ships and from shores, thus forming necessary elements for the

[456] Convention on International Liability for Damage Caused by Space Objects, 29 March 1972.
[457] Convention for the Protection of the World Cultural and Natural Heritage, Paris, France, November 16th, 1972.
[458] From 29 December 1972, also known as the London Convention.
[459] See: London International Convention for the Prevention of Pollution from Ships (MARPOL), 2 November 1973.

international waters and supporting values protection, which automatically means: As natural recourses of Mankind[460] .

As the common heritage of Mankind, implicitly had been pointed air, with the elements of the Convention on Long-range Transboundary Air Pollution. This Convention has been adopted at the year 1979. Article 2, of the Convention treats the problem of air protection from pollution, including trans-boundary, as well as the pollution that attacks the international space, which means: Air as the common heritage of Mankind. This is précis example of the *Common Heritage of Mankind Principle* inculcating in reality.

Another adequate example of the *Common Heritage of Mankind Principle* presence is the United Nations Convention on the Law of the Sea[461], which had been formed with the general aim, among other things, to protect sea from the pollutions produced by humans. This can be seen in the Article 1 (paragraph 1 under 4), which defined that "*pollution of the marine environment* means the introduction by man, directly or indirectly, of substances or energy into the marine environment, including estuaries, which results or is likely to result in such deleterious effects as harm to living resources and marine life, hazards to human health, hindrance to marine activities, including fishing and other legitimate uses of the sea, impairment of quality for use of sea water and reduction of amenities". In the aim of protection Convention by the Articles: 136, 137 and 140 regulate regime of using deep bottom of sea's and oceans in international waters, clearly saying that respective space and mineral resources at this area are *common heritage of Mankind.*

[460] See: Rule No 9 from the London International Convention for the Prevention of Pollution From Ships, text known as "MARPOL Convention," after the novelizing at the year 1978, as well as Protocol (Year 1978), at the Joldzic (1995) The Environment and International Agreements of Importance for the Federal Republic of Yugoslavia, pp 58-59.
[461] United Nations Convention on the Law of the Sea (UNCLOS), December 10th, 1982.

The Vienna Convention for the Protection of the Ozone Layer has approach to the ozone layer, the object of protection, explicitly as "the layer of atmospheric ozone above the planetary boundary layer (Article 1, paragraph 1). Convention has been adopted on March 1985, and complemented by the Montreal Protocol on Substances that Deplete the Ozone Layer (September 16, 1987)[462]. Primary task of this convention is "to protect human health and the environment against adverse effects resulting or likely to result from human activities which modify or are likely to modify the ozone layer (Article 2, paragraph 1)". This literally means to protect ozone layer as *common heritage of Mankind.*

Protection of resources placed out of sovereign states borders, on the Antarctic area, has been approached nearly thirty years ago, with the Protocol on Environmental Protection to the Antarctic Treaty[463]. This Protocol designates Antarctica as a "natural reserve, devoted to peace and science (Art. 2)". Article 3 of this Environment Protocol sets four basic principles applicable to human activities in Antarctica, while Article 7 prohibits all activities relating to Antarctic mineral resources, except for scientific research[464]. This convention treats Antarctica and its' wealth as the heritage of Mankind, not of any state. This is clear example of the *Common Heritage of Mankind Principle* inculcating.

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[462] See elements in: 1. The Montreal Protocol on Substances that Deplete the Ozone Layer, as either adjusted and/or amended In London 1990, Copenhagen 1992, Vienna 1995, Montreal 1997 and Beijing 1999. See: UNEP Ozone Secretariat 2. Joldzic, V. and Milicevic, G. (1995a), pp 64-66.

[463] The Protocol on Environmental Protection to the Antarctic Treaty (Madrid on October 4th, 1991), connected with The Antarctic Treaty from the year 1959.

[464] The Protocol has six Annexes. Annexes I to IV were adopted in 1991 together with the Protocol and entered into force in 1998. Annex V on Area Protection and Management was adopted separately and entered into force in 2002. Annex VI on Liability Arising from Environmental Emergencies was adopted in Stockholm in 2005. The Environment Protocol established the Committee for Environmental Protection (CEP) as an expert advisory body to provide advice and formulate recommendations to the ATCM in connection with the implementation of the Environment Protocol. The CEP meets every year in conjunction with the ATCM.

United Nations Framework Convention on Climate Change, from the year 1992, that treats "a change of climate which is attributed directly or indirectly to human activity that alters the composition of the global atmosphere and which is in addition to natural climate variability observed over comparable time periods (Article 1, paragraph 1). From this reason "the ultimate objective of this Convention… is to achieve… stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system (Article 2). State Parties concluded that "should protect the climate system *for the benefit of present and future generations of human mankind*, on the basis of equity and in accordance with their common but differentiated responsibilities and respective capabilities (Article 3, paragraph 1)[465]". This simply means that climate is observed in accordance with the *Common Heritage of Mankind Principle* as the common heritage of humanity.

Protection of resources placed out of sovereign states borders, on the Antarctic area, has been approached at the year 1991st, with the Protocol on Environmental Protection to the Antarctic Treaty[466], by which has been regulated that natural resources at this area will be exploited in limited volume for next 50 years[467]. As we know, it has entered into force on 14 January 1998.

The Biodiversity Convention regulates questions of relations toward biodiversity, its sustainable use, and righteous distribution of benefits

[465] UN Framework Convention on Climate Change, Article 3: Principle 1, in: Exertion of the United Nations for Better Environment in 21 Century, p. 2/III. See also Joldzic (1995) The Environment and International Agreements of Importance for the Federal Republic of Yugoslavia, pp 84-85.
[466] Connected with The Antarctic Treaty.
[467] See: Protocol on Environmental Protection to the Antarctic Treaty.

obtained from genetic resources[468]. From the reason that the Convention treats biodiversity, but not just inside state borders, implicitly determine the elements of biological variety as the common heritage of Mankind, which is one more clear example of the *Common Heritage of Mankind Principle* inculcating.

As we can conclude from presented examples, observed *Common Heritage of Mankind Principle* now represent positive legal principle applied on entire goods, as the general object of regulation and protection of *International Ecology Law*. Furthermore we can conclude that:

1. No one state or person can be owner of the common heritage spaces or resources, but can be user,
2. Any using has to be done for the benefit of all humankind,
3. Common heritage of Mankind shall be used for peaceful purposes only, and
4. Common heritage of Mankind belong not only to present but also to future generations.

[468] About this see more: Joldzic, V. and Milicevic, G. (1995a), pp 85-87, and Biodiversity Convention, 3/I - 3/IX, at Exertion of the United Nations for Better Environment in 21 Century.

CHAPTER 9

FROM PREVENTION PRINCIPLE AND ITS DERIVATIVES TO THE PRECAUTIONARY PRINCIPLE

9.1. Introduction

Prevention Principle is one of the most important principles of the *Ecology Law*[469]. If we start observing it and think about it, going from the basic ecological idea to protect and adequately use the environment, we also have to notice that:

1. It is most logical to prevent pollution, or reduce it, at its' source,
2. The environmental and anthropocentric need is to dispose pollution in an environmentally safe manner,
3. Substances that are parts and parcel of pollution, which cannot be prevented or disposed in an environmentally safe manner, should be recycled, of course, also in an environmentally safe manner, and

[469] See: Declaration of the UN Conference on the Human Environment, Principle 21, 16 June 1972.

4. Pollutants whose pollution cannot be prevented, or recycled, should be adequately treated, in order to protect human health and life conditions, as well as the elements of the environment. At first place their use has to be maximally reduced.

At the level of International Law such approach had been formed in approximately more than last 40 years, gradually, especially about last 25 years, by the:

1. Establishing duties of avoiding ecological damage, and by the
2. Principle of diminution of pollution and diminution of waste materials,

but possesses much longer history that can be recognized more than eighty years ago, and, especially, which transforming can be seen through the approximately last 25 to 30 years, which leads to the *Precautionary Principle*. We think that all four of the mentioned principles have to be laconically analyzed.

9.2. Principle on Avoiding Ecological Damage

Duty to Avoid Ecological Damage, as a principle of International Law, was formulated at the same time as the *Institute of Standards*, mentioned at previous pages, with the case of Trail Smelter Arbitration between Canada and the United States of America[470], in which aim this Arbitration was formed. Arbitration had clearly formulated principle that any one of the states haven't got right to use her territory, or to let to be used, in any way that could make damage by gas, on her own, or territory of another state. This principle was later incorporated into a number of:

[470] See previously mentioned document: Trail Smelter Arbitral Tribunal – Decision Reported on April 16, 1938.

International Environmental Policy documents, to name two important:

- Stockholm Declaration, supra note 9 of the Article 22, and
- Rio Declaration, Principle 2 of Preamble, which proclaims that states have obligation to provide that activities under their jurisdiction, or control, do not make harm to environment of the another states, or to the environment outside national borders,

as well as the *International Law* documents, like:

- The Convention on International Liability for Damage Caused by Space Objects[471],
- Basel Convention[472], and
- London International Convention for the Prevention of Pollution from Ships[473],

and the other documents of International Law, by which texts, object of protection has been widen from the air, practically on the all elements of the *ecos*.

Diferentia spetifica of this principle is element of *damage*, well known from the time of Roman Empire, as the one of two elements that makes principle. Second element is *duty to avoid damage*. This means any ecological damage as well as damage produced by the negative ecological effects. At the other word speaking, *Principle to Avoid Ecological Damage* has been made, as specific law-logical mosaic, through the process of identifying its' constitutive elements:

- Resource(s) of pollution(s),

[471] See: Articles II and III of the Convention on International Liability for Damage Caused by Space Objects, Year 1972)
[472] Article 2 of Basel Convention. See: Joldzic, V. and Milicevic, G (1995a), pp 76-78.
[473] This principle has been implemented in the rules No 9, 10.2 and 10.3., of the London International Convention for the Prevention of Pollution from Ships. See Joldzic, V. and Milicevic, G (1995a), pp 58-59.

- Content of pollution,
- Dimension(s) of pollution(s),
- Danger(s) of pollution,
- Harmful effects of pollution(s), especially:
  - Negative anthropocentric effect(s) of pollution(s), and
  - Duty to avoid ecology harm produced by the pollution.

Common feature of all the listed elements is that can be precisely determined and dimensioned. We emphasize that this also means that we can, in each case, precisely determine:

- Real danger, starting from the content and dimension of the observed pollution, and
- Real negative impacts produced by the observed pollution.

We also point at two crucial facts:

1. To form precise picture of pollution, which meets the requirements of the *Principle on Avoiding Ecological Damage*, as the *Prevention Principle* variant, it is necessary to possess precise knowledge about the problem, not only, if any, assumption.
2. Term *Damage*, relating to material damage, means only civil damage, known and defined through the *Civil Law* branch. Damage that possesses dimensions that can be physically and financially measured.

9.3. Pollution Prevention and Waste Reduction Principle

As derivative of *Avoiding Ecological Damage Principle*, some authors quote *Pollution Prevention and Waste Reduction* (*Minimization*) *Principle.* Core of this principle is in behavior of the subjects of law that leads to the

prevention of pollution -- water, air and earth pollution prevention, as well as to reduction of waste production. Also, using of waste as secondary raw material. With logical analyze we will see that we have one variation of *Avoiding the Ecology Damage Principle*, variation without second crucial element: Damage, as defined by rules of the *Civil Law*.

This principle has been implemented in few *International Ecology* (*Environmental*) *Law* documents, like the:

- Barcelona Convention, from the year 1976,
- Montreal Protocol, from the year 1976,
- Convention on Long-range Transboundary Air Pollution, year 1979, *et cetera*.

The Convention on Long-range Transboundary Air Pollution is a good example of the *Pollution Prevention and Waste Reduction (Minimization) Principle*, by the Articles:

2 -- That treats matter of reduction on air pollution at large distances, and

6 -- By which are treated measures of air pollution limitations, including those measures that prevent or minimize appearance of waste materials in the air.

By the hasty analyze of mentioned, as the other Articles, of conventions that we cited as examples, it is obvious that those conventions do not treat question of:

- Possible, or
- Produced,

ecology harm. Those conventions, in principle, treat only matter of pollution prevention and minimization of the waste production.

9.4. Prevention Principle

Prevention Principle has been crystallized through pointing out of: Biodiversity, climate[474], trans-boundary waters of lakes and rivers, as well as to the other numerous group objects of protection. All those objects, through the process of their previous logical multiplying, have been leaded to development of our consciousness oriented on the necessity for preventive access to *ecos* in general. That is logical reason why *Prevention Principle*, although the *Ecology (Environmental) Law* principle, had been included in Principle 15 of *Rio Declaration* (as the Environmental Policy Principle), which declares that in the aim on protection of the environment, states, in accordance with their possibilities, will widely apply preventive measures. From this reason *Prevention Principle* has been clearly formulated, at the specific legislative way (we are free to say as soft law norm), as some kind of order, nearest to the *ius cogens* norms' manner of formulating and their law beings. This also means that *Prevention Principle* has imperative character. As such, considering number of states that signed (more than 190 in the moment of this book preparing) and ratified *Rio Declaration*, as well as a number of obliging International Law texts, could be considered as general principle of the *International Ecology Law*. Principle that incorporated the two previously analyzed[475].

[474] See: Article 3.3., from the United Nation Framework Convention on Climate Change, dated at the May 9, 1992.

[475] This principle is incorporated in national legislatures also. At the example of the positive law of the Republic of Serbia we can see this principle clearly defined in the Law on the Fundaments of the Protection of Nature, Article 5 supra note 1, inherited of F.R. of Yugoslavia, from the Year 1998.

9.5. Precautionary Principle

At previous pages we explained *Prevention Principle* logic and role: To prevent from any ecologically, thus anthropocentrically, negative pollutions and from them produced damages, but pollutions and damages as phenomenon that can be adequately, which means precisely, observed and its' content specified and measured.

Reality is occasionally more complicated. Humans produce not only dangers of environmental importance that can be easily and deeply précised, but also pollutions which are not so easy to determine. What else, that cause negative effects, some of them even after many years, but we do not know all the reasons why. From this reason participants of the UN assemblage at Rio clearly pointed that "In order to protect the environment, the *precautionary approach* shall be widely applied by States according to their capabilities. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation[476]".

Both principles: the *Prevention Principle* and the *Precautionary Principle* are aimed for the environmental protection, at the same time inside and outside the State borders, which is clearly visible from the Article 2 of the Rio Declaration.

What are the differences between the *Prevention Principle* and the *Precautionary Principle*? Four differences are easily visible and of utmost importance! Let us to explain:

1. While *Prevention Principle*, from the start of its' forming, treats precisely definable environmental harms as well as their reasons

[476] Rio Declaration, Principle 15.

and resources, harms to identifiable physical and artificial persons at the territory of State, national and or foreign,

2. *Precautionary Principle* is aimed to protect "of serious or irreversible damage (Article 15, first sentence)", but it is not defined and dedicated only for the protection at the territories of States, furthermore,

3. "Lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation (Article 15, second sentence)", which element is, it is obvious, clearly oriented at the dangers of environmental degradations, but not only at the territories of states, hence taking root of the *Precautionary Principle,*

4. While the *Prevention Principle* is pointed at the *environmental harm* that can be dimensioned the *Precautionary Principle* is pointed at the *environmental dangers*, precisely: *To prevent from environmental degradations!*

Precautionary Principle had been implemented in variety of the *International Environmental Law* documents. For example into the Convention on the Protection of the Marine Environment of the Baltic Sea Area[477], its' Article 3, paragraph 2[478], which defined that "The Contracting Parties shall apply the *precautionary principle*, i.e., to take preventive measures when there is reason to assume that substances or energy introduced, directly or indirectly, into the marine environment may create hazards to human health, harm living resources and marine

[477] Convention on the Protection of the Marine Environment of the Baltic Sea Area, Helsinki, April 1992.

[478] Similar approach can be seen from the Bamako Convention on the ban on the Import into Africa and the Control of Transboundary Movement and Management of Hazardous Wastes within Africa (1991), precisely from the Article 4, paragraph 3, under (f): The Adoption of Precautionary Measures.

ecosystems, damage amenities or interfere with other legitimate uses of the sea even when there is no conclusive evidence of a causal relationship between inputs and their alleged effects". As can be seen from this example precautionary principle is applicable at the case when there is some reason "to assume that substances or energy introduced, directly or indirectly… may create hazards to human health, harm living resources and marine ecosystems, damage amenities or interfere with other legitimate uses of the sea *even when there is no conclusive evidence of a causal relationship between inputs and their alleged effects*". This is, practically one more difference between *precautionary* and *prevention principle*, having in mind that *Prevention Principle* request from us to know "*conclusive evidence of a causal relationship between inputs and their alleged effects"* as such relationships can be seen from the Trail Smelter Arbitration Decision (at the year 1935).

As we can see, the *Prevention Principle* application in reality is based on certainties: Knowledge on the resources, precise content and dimensions of identified pollutions as well as the ways of its expressing. *The Precautionary Principle* does not request such certainty, quite contrary, requests application of the environmental protection measures also in the cases of incomplete scientific knowledge about perceived problem(s).

CHAPTER 10

A POSTERIORI PROTECTION PRINCIPLES

10.1. Introduction

As we can conclude from previous pages, any person, physical or artificial, State also, can possess and wants to realize some right connected with the environment, or that arise from the basic and irrevocable right on the life in healthy environment, thus right on healthy environment itself. From this clear reason is understandable utmost need for the adequate law ways and facilities for regulating, but regulating in a manner to adequately realize such right of physical and artificial persons. This means, at first place, to realize what is necessary to maintain and develop needed healthy environment. Our previous pages, from the start of this study, treated such questions. But reality is that are constantly present various dangers and consequences that negatively hit human right on life in healthy environment. Such dangers and their repercussions also need adequate measures, of course legal. We also point at the fact that such dangers and consequences are present not only at the territories of national states but also that in some cases have origins from the other States. All such problems need valid principal approach. Next part of this study, although small, processes such principal questions how to approach

to the problems identified and resolve them. Questions that we group and named as the *A Posteriori Protection Principles*. Name of group that we had formed is logically divided from the fact that this group treats real problems that need posterior reactions, but not only of affected physical or legal person.

10.2. Harm Compensation Principle

Talking about the *A Posteriori Protection Principles* we, at first place, direct our attention at the so cold *Harm Compensation Principle*. Analyzing *Harm Compensation Principle* we contemplate it as the law logical construction that precedes *Polluter Pays Principle*, as more extensive in content, for which is specific that treats *actual* and *future* as well as *possible* harm, which is wider than obligation to pay only real damage in actual time, on which obliges the *Harm Compensation Principle*. To be precise, *Harm Compensation Principle* obliges on the compensation for harm:

1. That can be seen as measurable damage, not future damage,
2. Harm that hit some right, and
3. Harm that hit some owner or holder of right.

This principle started at the level of *International Environmental Law* with the development of the Vienna Convention on Civil Liability for Nuclear Damage, Article 2[479]. After this, application of the principle has been evolved on the protection in case of civil harm produced by sea pollution with oil and derivatives, by adoption of the International

[479] See: Vienna Convention on Civil Liability for Nuclear Damage (May 21st 1963), as well as some law on the ratification, for example the Yugoslavia Law on the Ratification of the Vienna Convention on Civil Liability for Nuclear Damage (Year 1977).

Convention on Civil Liability for Oil Pollution Damage[480]. At the other words, principle has started by treating a small number of elements of the environment, but clearly developing civil liability for produced harm.

Modern *Ecology Law* looks at environment and all goods of the *ecos* as property of present and future generations. From this point of view also looks at possible harm caused on any good that consist the *ecos*, damage produced by man, or by states, as the injury of this specific and complex form of object of right on property.

Harm Compensation Principle was implicitly pointed at the level of environmental policy, for the first time, by the Principle 21 of Stockholm Declaration. This Principle issue that States are responsible to provide that activities from their territories, and from territories under their control and jurisdiction, do not make any damage on environment of the other states. Just at the same way had been formed the Principle 2 of the Rio Declaration. This principle accentuates that States have responsibility to provide that activities from their territories, and from territories under their control and jurisdiction, do not make any damage on the environment of the other states. The fact is that existence of such regulation, of duty, automatically means parallel existence of obligation from negative relation toward this duty. Clearly: Obligation of compensation for damage, or damages, produced by negative doing toward legally, at the formal way, defined duty. This is visible from the Principle 13 of the Rio Declaration, which says that States should develop national legislatures concerning:

- Obligations for environmental harm, and
- Compensating victims[481].

[480] See, for example, Uredba o ratifikaciji međunarodne Konvencije o građanskoj odgovornosti za štetu pričnjenu naftom (Decree on the Ratification of the International Convention on Civil Liability for Oil Pollution Damage), from the Year 1977, and Joldzic, V. and Milicevic, G (1995a), p. 70.

States also have to cooperate promptly and efficiently in the aim of future development of the *International Environmental* (*Ecology*) *Law* - his part that treats obligations from harm and problem of compensating the victims for consequences produced by activities at the territories under their jurisdiction or control, as well as by activities done on the territories outside their jurisdiction and control[482]. This means: At the *International Law Level.* Of course, any harm has to be noticeable damage (rule from the *Civil Law* branch).

At the International Law level call for States to form *Harm Compensation Principle*, or principle itself, can be recognized, for example, into the:

- Brussels Convention Supplementary to the 1960 Convention on Third Party Liability in the Field of Nuclear Energy[483],
- Convention on Civil Liability for Oil Damage[484], Article II,
- Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971[485],
- Convention on International Liability for Damage Caused by Space Objects[486],
- Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter[487], Article X,

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[481] It is obvious that mentioned Principle 13 of the Rio Declaration is clear *ius cogens* norm for all states that ratified observed convention, as can also be seen at the Principle 22 of the Stockholm Declaration.

[482] See: Principle 13, 1/III at the Exertion of the United Nations for Better Environment in 21 Century, Supplement 1.

[483] Brussels Convention Supplementary to the 1960 Convention on Third Party Liability in the Field of Nuclear Energy, January 31, 1963.

[484] Convention on Civil Liability for Oil Damage, November 29 1969.

[485] Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971, Brussels, December 18, Year 1971.

[486] Convention on International Liability for Damage Caused by Space Objects, March 29, 1972.

- Convention on Long-range Transboundary Air Pollution[488], Article 3,
- Convention on the Regulation of Antarctic Mineral Resource Activities[489], Article 8,
- Bamako Convention on the Ban of the Import into Africa and the Control of Transboundary Movement and Management of Hazardous Wastes within Africa[490], Article 12 that obliged Parties to form Protocol setting out appropriate rules and procedures in the field of liabilities and compensation for the environmental and accompanied damage,
- Convention on Biological Diversity[491], Article 3,
- Convention on Civil Liability for Damage resulting from Activities Dangerous to the Environment[492],
- Basel Convention Protocol on Liability and Compensation for Damage Resulting From Transboundary Movements of Hazardous Wastes and their Disposal[493],
- Protocol to Amend the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage[494],

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[487] Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, 29 December 1972.
[488] Convention on Long-range Transboundary Air Pollution, 13th November, 1979.
[489] Convention on the Regulation of Antarctic Mineral Resource Activities, 25th November 1988.
[490] Bamako Convention on the Ban of the Import into Africa and the Control of Transboundary Movement and Management of Hazardous Wastes within Africa, Bamako, Mali, Year 1991.
[491] Convention on Biological Diversity, 5th June 1992.
[492] Convention on Civil Liability for Damage resulting from Activities Dangerous to the Environment, 21st June 1993.
[493] Basel Convention Protocol on Liability and Compensation for Damage Resulting From Transboundary Movements of Hazardous Wastes and their Disposal, Basel, 10th December 1999.

- Convention on Supplementary Compensation for Nuclear Damage[495],
- Protocol to Amend the Vienna Convention on Civil Liability for Nuclear Damage[496],
- Protocol on Liability and Compensation for Damage Resulting from Transboundary Movements of Hazardous Waste and their Disposal, December 10, 1999,
- Paris Convention on Third Party Liability in the Field of Nuclear Energy[497], and
- Protocol to Amend the Brussels Convention Supplementary to the Paris Convention on third Party Liability in the Field of Nuclear Energy[498].

10.3. Principle of Equal Access to Legal Proceedings

Principle of Equal Access to Legal Proceedings of the *International Environmental Law* possesses deep roots that can be recognized many decades ago at the levels of *International Policy* and *International Law*. Its' general fundament can be recognized into the United Nations Charter and as further developed in the International Covenant on Civil and Political

[494] Protocol to Amend the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, November 27, 1992.
[495] Convention on Supplementary Compensation for Nuclear Damage, 12th September 12 1997.
[496] Protocol to Amend the Vienna Convention on Civil Liability for Nuclear Damage, 12th September 1997.
[497] Paris Convention on Third Party Liability in the Field of Nuclear Energy, 29th July 1960, as amended by the Additional Protocol of January 28, 1964, by the Protocol of November 16, 1982, and by the Protocol of February 2004.
[498] Protocol to Amend the Brussels Convention Supplementary to the Paris Convention on third Party Liability in the Field of Nuclear Energy, 12th February 2004.

Rights[499]. Both documents are globally adopted. Both international policy documents

The United Nations Charter, promote:

1. As the element of general purpose of the UN, respectability of the principle of equal rights of people (by the Article 1, paragraph 1),
2. Universal respect for, and observance of, human rights for all, without distinction [Article 55, paragraph 1, under (c)],
3. Obligation for all members States to take adequate actions for the achievement of the Article 55 purposes (Article 56).

Roots for the *Principle of Equal Access to Legal Proceedings* also can be recognized into the Universal Declaration of Human Rights (UDHR)[500], to be precise into the:

Article 1, which proclaims that "All human beings are born free and equal in dignity and rights",

Article 2, which define that "Everyone is entitled to all the rights and freedoms set forth in the Universal Declaration without distinction of any kind", and

Article 7, which clearly said that "All are equal before the law and are entitled without any discrimination to equal protection of the law". This precisely means equal before the law of any state, national and foreign.

Starting from such, in essence political, documents and their soft law norms had been formed International Covenant on Civil and Political Rights as specific law text, contract by its' logic, that treats two kinds of human rights:

- Civil, and

[499] International Covenant on Civil and Political Rights, 16 December 1966.
[500] The Universal Declaration of Human Rights (UDHR), 10[t] December 1948.

- Political,

Which rights, of course, involve the right on life in healthy environment and all the rights that are necessary for its' realizing. This can be observed from the International Covenant on Civil and Political Rights text, especially its' six articles:

Article 1, paragraph 1, which proclaim that all the humans posses right to freely determine and pursue their economic, social and cultural development, which also means right on the environmental sustainability and development as well to protect such rights,

Paragraph 2, which defined that "In no case may a people be deprived of its own means of subsistence",

Paragraph 3, which specify that States Parties "shall respect that right, in conformity with the provisions of the Charter of the United Nations", which also means all the human rights, including on the healthy and protected environment as well on the protected elements of environment, as well, of course on life and health itself,

Article 2, Paragraph 1, which defined that each State Party have to respect right `of all individuals without distinction, and

Paragraph 2, which prescribed that State Parties will "adopt such laws or other measures as may be necessary to give effect to the rights recognized" in the Covenant, as well that

Paragraph 3, Under (a), which defined that each State Party have "to ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy",

Under (b), that such remedy shall be feasible by the adequate doings of "competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State", as well as

Under (c) that such remedies shall be enforced by the competent authorities",

Article 14, paragraph 1, which call State Parties to adopt that "all persons shall be equal before the courts and tribunals", which also means to be equal to start the protection of personal threatened or injured right!

Article 16, contributes to the previously mentioned defining that "Everyone shall have the right to recognition everywhere as a person before the law", which also means before the law of national as well as of foreign State!

Article 26, finally, defined that "All persons are equal before the law and are entitled without any discrimination to the equal protection of the law". We point that this Article does not use term "physical persons" or "artificial persons", only "persons".

Equal access to legal proceedings as the international policy and *International Law* principle, as we explained with previous examples, through the time evolved into the *International Environmental Law Principle*. As the principle of *International Environmental Law* the *Principle of Equal Access to Legal Proceedings* manifest its' essence in a right of injured sides to have equal access to the:

- Administrative, and
- Judicial proceedings

on the territory of polluters - equal rights as the polluters have at the territory of State where they are officially registered as persons, physical and artificial, or at the territory from which they do such pollution or can do possible act of pollution. At the other word, this principle is applicable in the case of the produced harm, as well as in the case when harm can be expected. In the case that any harm can be expected it is logical to demand application of *the Ecology Expertise Principle*, before application

of any technology, installations, or work process, make noticeable damage on the territory of another state.

The Principle of Equal Access to Legal Proceedings: administrative and judicial, has been globally expressed, at the first time, through the International Convention on Civil Liability for Oil Pollution Damage[501], by which has been regulated that every side, which ratified Convention, has equal right on the compensation for harm, including the right of legal proceedings for the compensations demanding.

This principle is similarly expressed in the Vienna Convention on Civil Liability for Nuclear Damage[502], as well as in the Convention on Industrial Accidents, Article 9[503], as in a number of regional legislative documents. For example: in the Article 3 of the Nordic Convention for Protecting the Environment[504], as well as in the others. By such international law legislative texts *Principle of the Equal Access to Legal Proceedings* has been widely accepted as principle applicable not only on the one or few objects of protection but on all the objects that constitute the environment.

[501] Through the ratifications such is the Yugoslavia' act: International Convention on Civil Liability for Oil Pollution Damage (CLC), from the Year 1977.
[502] See: 1. Convention on Third Party Liability in the Field of Nuclear Energy, of 29th July 1960, as amended by the Additional Protocol of 28th January 1964 and by the Protocol of 16th November 1982, 2. Vienna Convention on Civil Liability for Nuclear Damage, and 3. Yugolsvia' Zakon o ratifikaciji Bečke konvencije o građanskoj odgovornosti za nuklearne štete (Law on Ratification of the Vienna Convention on Civil Liability for Nuclear Damage) from the Year 1977.
[503] See: Convention on Industrial Accidents (December 1986), also Joldzic, V. and Milicevic, G (1995), p. 80., and the Convention on the Protection of the Environment between Denmark, Finland, Norway and Sweden, Done at Stockholm on 19 February 1974, hereinafter Nordic Convention for Protecting the Environment.

10.4. Penal Responsibility Principle

Penal Responsibility Principle has been in process of developing and applying for many years in Europe, as well as in legislation of many out of Europe countries. Precisely: At the field of ecology damage legal treatment. Idea of penal responsibility has been based on understanding, formulated through texts of German lawyer Binding (from the beginning of the XX century), that everything, which is regulated, must have penal guarantee, in order to be efficient, which means really applicable legal creation. In the other words, formally, it is necessary to establish material-legal base, at first place, declared with some regular norm (in narrower sense), so that we, having this base, can develop penal - protection norm. This approach formally could be easily founded in legislations of some countries, for example: Italy, and Great Britain. This access is expressed on the simple way: That in concrete case has been violated ecological, in essence administrative, norm, and by this act that it was done some incriminated act.

On the other side are many states that have the incriminations with strictly ecologically-protective role, or have incriminating norms that this ecologically-protective role realize parallel to their primary protective role, by norm's being living in reality, but it is hard to establish their positive legal base between regulatory norms. "Furthermore, there are present legislations which create ecological incriminations independently from the norms of the environmental legislation, or the *Administrative law*[505]".

Although, location of penal norms doesn't have to like as essential, we consider this location as really important for putting in life *Penal*

[505] Stojanović, Zoran (1995), p 292.

Responsibility Principle - responsibility for caused ecology damage. In modern legislation there are three different accesses to this question:

1. Legislation of, for example: Austria, Holland and Germany[506], these norms locate inside of criminal legislature,
2. Inside secondary criminal legislature such norms are placed in: Belgium, France and Italy, and
3. As sub variation of previous model, has been developed legislatures where such norms are located inside of general laws pointed on the environmental protection. Such legislative construction, for example, possess: Denmark, Greece, Switzerland and many other states[507].

Serbian legislature, norms aimed for the ecology-protection, has been placed primarily and mostly inside of general, and in less measure in secondary criminal legislature[508], starting from two rules:

- That is in question violation of norm(s) that regulates wanted ecological relation, and
- That in that case comes to expression high level of social danger, which require adequate incriminating, sanctioning and penal treatment.

[506] German legislature, for example, give clear law-material basics for formulating criminal norms through "Gesetsz uber die Umwelthaftung." See: *Bundesgesetzblatt* [1990]. No 1.
[507] More about this see at the Stojanovic, Z. (1995), pp 291 - 301.
[508] About this see more at the:
Joldzic, Vladan: *Ecology Criminality in Law and Reality* – II ed., III Chapter: Normative Defining of the Ecology Criminality at the Yugoslav Regulation, pp 45-63,
Criminal Code of the Republic of Serbia (Year 2005), Chapter 24: Ecology Crimes, Belgrade, Serbia, and
Zakon o jonizujućem zračenju (Ionization Radiation Act) from the Year 1996.

CHAPTER 11

PRINCIPLE OF COOPERATION AND ITS' DERIVATIVES

11.1. Introduction

International Ecology (Environmental) Law has to be observed as the part of legal science and practice that, in essence, depends on common will of States to precisely regulate and apply something, having in mind one general object: Human right on the life in healthy environment. Such approach automatically produces one general need: Cooperation of States, of course many variants of cooperation, accordingly to many environmentally important phenomena. Moreover, such cooperation, its' variants, arises from many:

1. International policy documents, this means from so cold soft law norms, and
2. International Law documents of environmental importance, their classical law norms.

While *International Environmental Policy* documents forms parts of texts logically formulated as norms, we remind the reader that in essence

all such parts are precisely formulated political calls to States, at the same time guidance, what and how to formulate in national legislatures. Not the norms itself. In many cases such international environmental policy documents precede forming of the international law documents that treat the same problem or problems.

International Law, especially *International Environmental Law*, forms many legislative documents that regulate some of the questions connected with interstate and international cooperation of environmental importance, especially questions that regulate some kind of duties of environmental notability.

11.2. Principle of Cooperation

In a last few decades at the levels of the *International Environmental Policy* and *International Ecology Law* have been developed certain number of principles with common denominator to regulate different forms of cooperation between states, on the *ecos'* protection. They are relating on:

1. Interchanging of the ecologically important information,
2. Obligation of previous information,
3. Getting of the previous consent,
4. Consultation,
5. Informing in the case of emergency, and
6. Cooperation in the case of emergency,
7. Questions of the financial and technical transfers, as well as
8. Legal defining of the sustainable development on the level of the national legislatures.

Moreover, today we can talk about the existence of *general principle on the international cooperation*, formed at first place through the soft law norms of precise *International Environmental Policy* documents, in the aim of strengthening the inner capacities of sustainable development[509], establishing the interstate cooperation in the aim of better solving the problem of environmental degradation[510], as the prevention of trans-boundary transport, or transfer of any activity, or material, that can cause, or are causing, the environmental degradation and/or the attack at human health[511]. We are in position to see fast development of derivatives of *the Principle of Cooperation* (known also as the *Cooperation Principle*), from which reason we should dedicate our attention to them. Of course at the International Law level. Allow us to explain shortly at next pages such elements that in totality form *General Principle of Cooperation.*

11.3. Principle on the Systematic Tracking of the Environmental Condition

Principle of Systematic Tracking of the Environmental Condition has been in status of developing for long period of years, throughout conventions and the other *International Law* documents, which regulate some relation, or restore rules of behavior toward:

- Waters in general[512],
- Transboundary waters of rivers and lakes[513],

[509] See: Principle 9, Rio Declaration.
[510] See: Principle 12, Rio Declaration.
[511] See: Principle 14, Rio Declaration.
[512] See: Agenda 21, Chapter 18, Activities, k.] "...integral control of quality and quantity of waters...," p. 5.2./XXXV.
[513] See: Article 8, Convention on Protection and Use of Transboundary Watercourses and International Lakes.

- Waters of seas and oceans[514],
- Air[515], especially ozone layer[516],
- Atmosphere in all[517],
- Cultural heritage[518],
- Climate[519],
- Transport[520],

and the other objects of regulation of the *Ecology Law* relations. As such this principle regulates general questions of the ecosystem health tracking. To be precise: Tracking of many kinds of environmental stress produced by human doings, especially economical activities, as well as produced environmentally negative consequences. Basic logical idea of this principle is:

1. To observe and document present environmental condition(s), and

[514] See: Article 200 of the Convention on the Law of the Sea.
[515] With Article 6 of the Convention on Long-range Transboundary Air Pollution.
[516] Whose systematic control threat, in detail, Agenda 21, 5.2./IV, Activities under B (expanding of the global ozone layer control system). This has been done in Yugoslavia (and Serbia) from the year 1990, having in mind the Ratification of the Vienna Convention for the Protection of the Ozone Layer, officially approved, for example, in the *Official Journal of Yugoslavia*, Year 1990, No 1) and the Regulations on Establishing the Net and Program for Meteorological Stations of Yugoslavian Interest (see *Official Journal of Yugoslavia* Year 1990, No 50). As can be seen, this systematic control has been established in Yugoslavia, this mean Serbia also, before Agenda 21 formulating.
[517] Agenda 21, Part II, Chapter 9, 5.2., and d.] Activities, under d.), where is fashioned cooperating in identification of the levels of atmospheric soiling, levels of gas concentration that produce the effect of the greenhouse.
[518] Regulated by Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict, from the year 1954, and its two Protocols (1954 and 1999).
[519] For whom Article 4.1., under a.], in connection with Article 12 of the United Nation Framework Convention on Climate Change (Year 1992) define obligation of constant forming and maintain the cadastre (estate registry) of the polluter.
[520] Agenda 21, 2. - Transport, C], that treats systematic observing of the emissions and developing of the base of statements.

2. To predict trends which means to anticipate future environmental consequences on the base of adequately formed observing results, or to say at another way, to predict future status and qualities of observed environment.

To achieve numbered results is of utmost importance not only to continually act, of course at the national State territory, but to use adequate methods of doings, which means: Adequate methods on the systematic tracking of the environmental conditions. Alas, it is not enough to use adequate methods only at the national territory, or territories.

Many kinds of environmental loads and overloads can be produced at the one but hit some other territory or territories. This automatically requires adequate tracking at the territory of environmentally negative doings as well at the territories across which products of such doings are in transit. This requires that states unify methods of tracking, but also of the exchange of environmentally important information. Only at such a way *Principle of Systematic Tracking of the Environmental Condition* can be applied in reality. This, finally, means that States have to mutually regulate all previously mentioned methodological questions of tracking and exchanging the environmentally important information.

11.4. Information Exchanging Principle

As we can see from the previous observed and shortly explained *Principle of Systematic Tracking of the Environmental Condition*, States are under constant pressures of environmental needs, possibilities and unwonted doings, as well as under obvious natural and accidental effects and repercussions, consequently under the powerful need for *Systematic Tracking of the Environmental Condition*, but not only at national territories. This also means that States are also under pressure to

adequately exchange necessary information. From this reason States, through years, regulate, with numerous international law documents, concrete questions how to exchange some kind of environmentally important information, producing the elements of principled approach to such problem of the environmentally important information exchanging, now known as the *Information Exchanging Principle*. This principle has been built, parallel, in many *International Environmental Policy* and *Ecology Law* documents.

For the *Information Exchange Principle* propagation are of utmost importance so cold soft law norms, formulated at the level of *International Environmental Policy*, firstly as Stockholm Declaration environmental policy call[521] and above all by the posterior Rio Declaration elements[522].

At the level of international environmental law *Information Exchanging Principle* had been formulated through many conventions, at first place of global importance. For example, in the:

1. International Atomic Energy Convention on Assistance in the Case of a Nuclear Accident or Radiological Emergency[523],

[521] Stockholm Declaration, Article 20, call States to "free flow of up-to-date scientific information and transfer of experience… to facilitate the solution of environmental problems".

[522] Principles 18 and 19 of the Rio Declaration, Appendix 1; 1/III. See: Exertion of the United Nations for Better Environment in 21 Century, Appendix 1, Government of the F.R. Yugoslavia - Federal Ministry for the Environment.

[523] See Articles:
2, paragraph 2,
4, paragraph 2,
5, paragraph 1 under (a) and [(b) (III)], and
6, paragraph 1,
Resources:
International Atomic Energy Convention on Assistance in the Case of a Nuclear Accident or Radiological Emergency (hereinafter IAEA Convention on Assistance in the Case of Nuclear Accident), September 26th 1986, and, for example,

2. Vienna Convention for the Protection of the Ozone Layer[524],
3. Biodiversity Convention[525],
4. Convention on Protection and Use of Transboundary Watercourses and International Lakes[526],
5. Convention on Long-range Transboundary Air Pollution[527],

and the others. This principle is related on the exchanging of all ecologically relevant information, such are:

- The facts on possible pollution, or
- Pollution in progress.

For example: Pollution on trans-boundary rivers. Furthermore, facts about trans-boundary waters quantity and using, elements of biodiversity which are important for two or more sovereign states[528], *et cetera*.

Application of this principle can be limited only by the legislation of sovereign state[529], but cannot be limited in cases when are in question facts that are treated by precise formulated norms of bilateral or multilateral legislative agreements that precisely regulate accessibility and exchanging of ecologically important information.

SFR Yugoslavia Law on Ratification the International Atomic Energy Convention on Assistance in the Case of a Nuclear Accident or radiological Emergency, from the Year 1989.

[524] Article 5: Transmission of information.

[525] Article 17: Exchange of Information.

[526] See: Convention sur la protection et l'utilisation des cours d'eau transfrontières et des lacs internationaux, Article 6 - Echange d' informations (March 1992).

[527] See: Article 8 of the Convention.

[528] See: Article 17, 3/VIII, Biodiversity Convention, in Exertion of the United Nations for Better Environment in 21 Century.

Previous Informing Principle has been included in domestic legislature of ex-Yugoslavia and present day Serbia by the Zakon o ratifikaciji Konvencije o ranom obaveštavanju o nukleranim nesreaćama (Act of ratifying the Convention on Early Notification of Nuclear Accident) at the Year 1989, and Zakon o integrisanom sprečavanju i kontroli zagađivanja životne sredine (Act on the Integral Prevention and Control of the Environmental Pollution), Year 2004.

11.5. Previous Informing Principle

Essence of the *Previous Informing Principle* is in obligation of States that when plan, or do, any potentially danger action, to inform:

- About this action, as well as about
- Any danger connected with mention action,

State, that can be hit by such action. This principle has been included in many multilateral agreements - international law conventions. For example, principle has been manifested by:

Article 206 of the Convention on Law of the Sea[530],

Article 8 and 9 of the Convention on Long-range Transboundary Air Pollution',

Article 8 of the Montreal Protocol',

Article IV point 1, under C and D of the International Maritime Organization Convention on the Prevention of Marine Pollution by Dumping Wastes and Other Matter[531],

Articles 6 and Article 13, in connection with the Article 9, of the Convention on Transboundary Lakes and Watercourses[532], *et cetera*.

By forming of those documents, step-by-step, it has been broadened legal scope of *Previous Informing Principle*.

On the general *Ecology Law* level *Previous Informing Principle* has been raised on Rio de Janeiro summit, through the soft law norm of the Principle 19, which issue that states have obligation of prior and prompt

[530] See: Law on Ratification of the Convention on Law of the Sea, from the Year 1986.
[531] Those norms issue rules that information about nature and quantities of the all materials, for whom have to be given permission for throwing out, previously have to be given to the Deponent of the Convention and to the neighboring states.
[532] Helsinki, 1992.

notification, as well as giving of relevant information to the potentially endangered states, about activities that may have significant negative consequences, also to do consultations with this states in early phase and in good measure[533].

11.6. Consultation Principle

Consultation Principle is logically connected with the *Previous Informing Principle*. Its' essence is in a rule that State which is planning any activity, potentially of negative influence on some other State, has to do previous consultation with the state in question. For example, as this is defined by the *Convention on Transboundary Lakes and Watercourses*, its' Article 10, neighboring states have obligation to do previous consultation (for such activities also), on the base of reciprocity, good faith and neighborhood[534]. For this is good example the Article 8 of the Montreal Protocol on Transboundary Pollution, and many others.

Essence of the *Consultation Principle* is in the obligation of State at which territory something has to be done (by the State or by some economic entity) to consult State(s) which can be eventually or unavoidable hit by some activity consequence(s) that are environmentally and/or anthropocentrically negative. To consult:

- What,
- In which manner, and
- In which dimension,

[533] About reported details see more at: Rio Declaration, Principle 19, 1/III, in Exertion of the United Nations for Better Environment in 21 Century.
[534] See: Professor Dr. Slavoljub Popovic: *Regulation of the Protection and Use of Cross-frontier Flowing and Underground Water*, *Ecologica*, Year 1996, No 10.

is acceptable for State that will be affected. As such *Consultation Principle* is based on the:

- Principle of Sovereignty, and from its evolved
- Principle of Permanent Sovereignty over Natural Resources.

Also on the all general principles of the *International Law*[535].

Consultation principle is declared even for necessary acts in emergency cases. So, Article III, point A of the Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties issues obligation of the State that intervenes, to consult other States connected with the destiny, except in the case when are necessary measures from the reason of utmost need[536]. Similar law-logical solution has been implemented in the Article 5 of the Convention on Environmental Impact Assessment in a Transboundary Context[537], by rule that States (State of the pollution origin and target State) are obliged to consult mutually, on the base of documentation concerning possible or environmental assessment that was done.

11.7. Principle of Prior Requesting the Consent

Principle of Prior Requesting the Consent for some act's doing at the foreign territory has been implemented in a number of conventions, such

[535] See, for example: Vienna Convention on the Law of Treaties, adopted on 22 May 1969 by the United Nations Conference on the Law of Treaties, as well as Principles and guidelines for international negotiations, UN General Assembly resolution dated at the 20 January 1999.

[536] See: International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties (29 November 1969) and The 1973 Protocol which extended the Convention to cover substances other than oil - last amendments done at the year 2002. See also: Law on the Ratification of the Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties (Yugoslavia, Year 1977) and
Joldzic, V. and Milicevic, G. (1995a), pp 36-37.

[537] From the year 1991.

as the Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal - Basel Convention. This Convention, with the Article 6, has established principle of giving and getting the previous permission “as legally valid permission for beginning of waste transport, and according to kinds of waste, technical possibilities and legislature of the states included in concrete transboundary movement[538]‘‘.

This principle also is implemented into the convention concerning international trade with imperiled sort of wild flora and fauna -- so called CITES Convention[539]. By the text of Convention are precisely, in detail, defined necessarily permissions and certificates, also had been done special norm - clause of respecting the sovereignty of every State in the process of the forming of mentioned permissions and certificates[540]. If we respect norms of the CITES Convention, without all this, precisely formulated documents of prior requested consent, is not possible to do legal export act of any example of the imperiled sort of wild flora and fauna, from the State of origin.

Third group object, toward which principle of prior requesting the consent has been applied, are Mediterranean waters. According to the Protocol for the Prevention of Pollution of the Mediterranean Sea by Dumping from Ships and Aircraft's (1976), Barcelona Convention - Annex II, its’ Article 5, it is obligated to request prior agreement (in a form of permission) for dumping matters treated by the Convention and following protocols. Furthermore, had been established frame rules for the proceeding of getting the agreements (with Article 6 of Annex II). At

[538] See: Joldzic, V. and Milicevic, G. (1995a), pp 77.
[539] So called CITES Convention. Signed at Washington, D.C, on 3 March 1973, Amended at Bonn, on 22 June 1979.
[540] See: Joldzic, V. and Milicevic, G. (1995a), pp 90.

the same way had been done formulating of the supra note 8 of the Article 5 of the Convention on the Continental Shelf[541].

Group objects toward which have been regulated applications of the *Principle of Prior Requesting the Consent* also are: chemical substances[542], biodiversity[543], and nuclear accidents[544].

With simple analyzing of previous examples, become obvious that the *Principle of Prior Requesting the Consent* is really applicable on great mass, practically all *Ecology Law* group objects, which means: at the all the *Ecology Law* objects (one by one) that are elements of this integrated mosaic.

11.8. Principle of Notification in the Case of Emergency

One of the most important principles developed and implemented into *International Ecology Law* is *Principle of Notification in the Case of Emergency*. This principle had been logically and *in principium* formulated at the level of *International Environmental Policy* and précised through many International Law texts, of course *International Environmental Law* texts, which are, logically, of legislative meanings also, their constructions of: local, regional, continental as well as of global importance. If we analyze them over longer time it is obvious that States firstly regulated some important questions of emergency, for example at sea, and that mass of such regulations provide logical base to

[541] With this rule has been established obligation of the formal receiving the permission from the coastal state for investigating works at her epi-continental zone.
[542] Article 7, of the London Guidelines for Exchange of Chemical Information. See: Hunter, D., Sommer, J. and Vaughan, S. (1994), p. 47.
[543] See point 5 of the Article 15, Biodiversity Convention, in *Exertion of the United Nations for Better Environment in 21 Century*.
[544] As has been defined by the Article 2 of the International Atomic Energy Agency Convention on Assistance in the Case of a Nuclear Accident or Radiological Emergency (September 1986).

formulate principled approach to their common need to resolve necessity for the *notification in the case of emergency*. From this reason observed principle had been formed and expressed in the applicable form at the level of *International Environmental Policy* with the *Rio Declaration*.

To be precise, The Rio Declaration on Environment and Development, by the Principle 10, implicitly express the mentioned *Principle of Notification in the Case of Emergency* by restoring the right of citizens on the ecologically relevant information, as well as the right of all subjects, *an general*, on the important ecologically valid information.

This principle also and explicitly is expressed by the Principle 18 of the Rio Declaration. This text regulates that states have obligation to inform other states about eventual natural catastrophes, or another emergency situations, that can produce unexpected harmful consequences for the environment outside domestic borders - at the terrain of the state(s) that can be hit by such harmful consequences[545]. By this text, from the status of principle applicable on a small number of group objects, *Principle of Notification in the Case of Emergency* raised at the level of principle applicable on the all elements of the *ecos*.

At the level of International law *Principle of Notification in the Case of Emergency* had been gradually formed, through years and many environmental or international text of environmental importance also, texts that can be observed as legislative, which means that such texts oblige their Parties. Such *International Environmental Law* documents, as well as their precisely listed norms, are, for example:

1. Convention for the Protection of the Mediterranean Sea against Pollution [(Barcelona Convention) Year 1976], Article 12, paragraph 2 and Article 14, paragraph 1 under: (a) and (b),

[545] See: Principle 18, 1/III, Rio Declaration on Environment and Development, in: Exertion of the United Nations for Better Environment in 21 Century.

2. Convention on the Protection and Use of Transboundary Watercourses and International Lakes (Year 1992), Articles 4 and 6.
3. Convention on the Transboundary Effects of Industrial Accidents, (Year 1992) Article 3 paragraph 2, Article 9 and especially Article 10,
4. Convention on Biological Diversity (Year 1992), Article 14, paragraph 1, under (d),
5. Convention on Civil Liability for Damage Resulting from Activities Dangerous to the Environment (Year 1993), Chapter III – Access to information, Articles: 13 – 16,
6. Convention on Cooperation for the Protection and Sustainable Use of the Danube River (Year 1994), Article 12: Exchange of information, Article 13: Protection of information supplied, and Article 14: Information to the public,
7. Convention on the Law of the Non-navigational Uses of International Watercourses[546], Article 9 Regular exchange of data and information, and Article 28 – Emergency situation,
8. Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, 25 June 1998, Aarhus, Denmark, especially Article 5, paragraph 1 under (c).

Allow us to explain some of the examples, starting with the Convention for the Protection of the Mediterranean Sea against Pollution, its' Article 9, supra note 2. This Article clearly regulates that any Side, which come to know something about some critical situation (not only the side - producer of pollution) is obligated to get the information, without

[546] UN Convention from the year 1997.

waiting, to the "Organization[547]" and through "Organization'', or directly, to every side of *Barcelona Convention* that will be imperiled[548].

Another text of importance for our them is the Convention on the Protection and Use of Transboundary Watercourses and International Lakes, its' Articles 4, which established monitoring, and the Article 6, which established obligation to exchange information, of course in the case of emergency also.

Convention on the Transboundary Effects of Industrial Accidents regulates, with the Article 3 paragraph 2, obligation to States to develop adequate preparedness systems, while Article 9 obligate State Parties to ensure adequate information to the public in the areas capable of being affected by an industrial accident arising out of a hazardous activity. Finally, Convention regulates that "the Party of origin shall ensure that affected Parties are, without delay, notified at appropriate levels through the industrial accident notification systems (Article 10, paragraph 2)".

Convention on Civil Liability for Damage Resulting from Activities Dangerous to the Environment, through the norms of special Chapter III – Access to information, regulates:

1. Access to information held by public authorities (Article 14), especially
2. Access to information held by bodies with public responsibilities for the environment (Article 15), and
3. Access to specific information held by operators (Article 16) which are of importance for the proposed or real problem.

[547] Notion "organization" means the administrative apparatus of the UNEP, according to the Article 13 of the Convention.
[548] About this see more at the page 29 of the Joldzic (1995) The Environment and International Agreements of Importance for the Federal Republic of Yugoslavia.

Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, problems of information in the case of emergency treats with the Article 5, paragraph 1 under (c), establishing duty “In the event of any imminent threat to human health or the environment, whether caused by human activities or due to natural causes“ to adequately and without delay provide necessary “information which could enable the public to take measures to prevent or mitigate harm”.

11.9. Principle of Cooperation In the Case of Emergency

Principle of Cooperation in the Case of Emergency had been implemented in a number of conventions that treat some objects of protection, for example: Seawaters. This principle has been implemented in the Barcelona Convention, Article 11, supra note 3, text which prescribe that sides of contract are upon obligation to cooperate in giving technical and other support in the field of sea water pollution. This principle also has been incorporated in norms of the Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties. This document has been oriented at the cooperation in case of emergency: Sea accident - oil pollution. General object of protection of the Convention is a sum of group objects: seawater, life in seawater, fishing, tourism, prosperity of the polluted area, and a health of citizens at the shore. As we can see, analyzed principle is aimed at the protection of really great part of the *ecos*. We have to emphasize that analyzed principle is, in essence, derivative of the *Principle of Cooperation*.

Principle of Cooperation in the Case of Emergency had been especially developed through the norms that directly or indirectly regulate application of the principle at the problems that treat conventions through

their specific addendums, so cold protocols. This can be seen with a few examples and their elements, of course logically grouped.

Between so cold prevention and emergency protocols are:

1. Protocol Concerning Cooperation in Preventing Pollution from Ships and, in Cases of Emergency, Combating Pollution of the Mediterranean Sea[549], its'

   - Article 3, paragraph 1 under (b) that obligates Parties "to take all necessary measures in cases of pollution incidents", which means measures to help,
   - Article 6, which obliges Parties in the case of overboard loss of hazardous and noxious substances to cooperate as far as practicable to salvage such packages so as to prevent or reduce the danger to the marine and coastal environment,
   - Article 8, which regulate questions of "reception, transmission and dissemination of all reports and urgent information concerning pollution incidents", of course,
   - Article 10, which regulate "Operational measures" that are necessary to be provided by others for combat with pollution incident and its' effects, especially to safeguard human lives and the ship as the source of problem itself, and
   - Article 11, which regulates questions of emergency measures at the problems resource point, which means: on board ships, on offshore installations and in ports place, also, with

[549] Protocol Concerning Cooperation in Preventing Pollution from Ships and, in Cases of Emergency, Combating Pollution of the Mediterranean Sea, adopted at Malta, January 2002. This Protocol replaced the Protocol Concerning Cooperation in Combating Pollution of the Mediterranean Sea by Oil and other Harmful Substances in Cases of Emergency, adopted at the Year 1976 in Barcelona, Spain.

- Article 12, regulates questions of calling for and providing the assistance to deal with a pollution incident.
- Protocol for the Protection of the Mediterranean Sea against Pollution from Land-Based Sources[550], which regulates questions of cooperation between Parties when is likely that pollution will hit the marine environment of the Parties (Article 11, paragraph 1) as well as non contracting State (Article 11, paragraph 2),

2. Protocol for the Protection of the Mediterranean Sea against Pollution from Land-Based Sources and Activities[551], which, by the:
   - Article 10 - Technical assistance, regulates questions of assistance to State where is located land based source of pollution, and
   - Article 11 – Transboundary pollution, regulates questions of assistance to States from which territory pollution probably will hit or really hit territory of another State or international waters.
3. Protocol for the Protection of the Mediterranean Sea against Pollution Resulting from Exploration and Exploitation of the Continental Shelf and the Seabed and its Subsoil[552], its' Article 18 (Mutual assistance in cases of emergency), call State Parties to provide help in the case of emergency on direct request "or through the Regional Marine Pollution Emergency Response Centre for the Mediterranean Sea (REMPEC)".

[550] Protocol for the Protection of the Mediterranean Sea against Pollution from Land-Based Sources, adopted at 17th May, 1980, Athens, Greece.
[551] Protocol for the Protection of the Mediterranean Sea against Pollution from Land-Based Sources and Activities, adopted on 7th March 1996, Syracuse, Italy.
[552] Protocol for the Protection of the Mediterranean Sea against Pollution Resulting from Exploration and Exploitation of the Continental Shelf and the Seabed and its Subsoil. Adopted on 14 October 1994, by the Conference of Plenipotentiaries, Madrid, Spain.

As can be seen and concluded from presented examples, the *Principle of Cooperation in the Case of Emergency* has been implemented in a number of conventions, global as well as regional, and their numerous annexes and protocols, through the very precise norms that regulate necessary questions as well as steps of cooperation in the case of various emergency situations of environmental as well as in many situations of anthropocentrically oriented importance.

11.10. Principle of Financial and Technical Transfer

Combat with the environmental problems needs staff, knowledge and adequate technologies. In many cases even developed, not only the countries in process of developing, do not possess everything necessary to resolve some concrete problem, while underdeveloped usually do not have anything which is needed for combat with the environmental problems, especially with problems as accidents are. Many years ago such reality had caused political reflections, and after that first steps toward *International Environmental Policy* informal arrangements (of soft law cals charatcter), which had been and are also of importance for the problems of needed financial and technical transfer in the case of environmental needs. Hereinafter also of *International Environmental Law* efforts and results oriented at the problems of *needed financial and technical transfer* for resolving the environmental problems. This also means that we can observe questions of the financial and technical transfer in the case of environmental need at two levels, level of:

1. *International Environmental Policy*, and
2. *International Environmental Law*.

At the level of *International Environmental Policy* such efforts can be observed long ago, into the Stockholm Declaration text. This Declaration, clearly by the:

1. Principle 8, observed that ”Economic and social development is essential for ensuring a favorable living and working environment for man and for creating conditions on earth that are necessary for the improvement of the quality of life”,
2. Principle 9, concluded that „environmental deficiencies generated by the conditions of underdevelopment and natural disasters… can best be remedied by accelerated development through the transfer of substantial quantities of financial and technological assistance”,
3. Principle 12, explained that „particular requirements of developing countries” also often include environmental at the same time developmental “planning and the need for… additional international technical and financial assistance for this purpose”,
4. Principle 18, as the *Environmental Policy* logical construction, pointed that “Science and technology, as part of their contribution to economic and social development, must be applied to the identification, avoidance and control of environmental risks and the solution of environmental problems”.

In accordance with the Stockholm Declaration participants of the Rio Summit formed so cold Rio Declaration553, and pointed (by the Principle 3) that “The right to development must be fulfilled so as to equitably meet developmental and environmental needs of present and future generations”. Also that “All States and all people shall cooperate in the essential task of eradicating poverty (Principle 5)”. Furthermore that “States shall cooperate in a spirit of global partnership to conserve, protect and restore the health and integrity of the Earth's ecosystem (also that) in view of the different contributions to global environmental degradation, States have common but differentiated responsibilities… in view of the pressures their societies place on the global environment and

[553] ILM 31 (1992), 876 ff.

of the technologies and financial resources they command (Principle 7)". Rio Declaration also pointed that, in the aim "to achieve sustainable development and a higher quality of life for all people, States should reduce and eliminate unsustainable patterns of production and consumption and promote appropriate demographic policies (Principle 8), as well as that from this reason "States should cooperate… and transfer… technologies, including new and innovative technologies (Principle 9)".

Observing the *international environmental policy documents* and their elements as a sort of the soft law norms, some of them previously analyzed, but also norms present into many other international environmental policy documents, for example into the Agenda 21, its' Chapters:

8 - Integrating Environment and Development in Decision-Making,

33 - Financial Resources and Mechanisms,

34 - Transfer of Environmentally Sound Technology, Cooperation and Capacity-Building, and

39 - International Legal Instruments and Mechanisms,

we can conclude that the *Environmental Policy* contribution to the *Principle of Financial and Technical Transfer* had been and actually is great.

Principle of Financial and Technical Transfer, at the level of *International Environmental Law* has been and is in the constant process of transforming from principal observing how to regulate to its' implementing into the formally formed legal norms, at first place of international legislative law texts, as many conventions and their annexes and protocols are. Many of such legislative texts possess norms that directly treat some of questions connected with the problems of financial and technical transfer needed for resolving problem or problems resulting

from their precisely defined matters. Let us to present and laconically analyze some examples, of course respecting the time of their appearance.

Mankind long ago had needed the protection of the ozone layer, from this reason formed the Vienna Convention for the Protection of the Ozone Layer. But practical realization of this political and law idea is possible only since the Montreal Protocol on Substances that Deplete the Ozone Layer[554] entered into force. This text regulated necessary "Financial mechanism (Article 10)" but also with the new "Article 10A - Transfer of technology" practicable step, "consistent with the programmes supported by the financial mechanism, to ensure:

- That the best available, environmentally safe substitutes and related technologies are expeditiously transferred to Parties operating under paragraph 1 of Article 5; and
- That the transfers referred to in subparagraph (a) occur under fair and most favorable conditions".

The Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal regulates small number of very important questions connected with the international cooperation, for example, with the:

Article 10 – International Co-operation, which regulates questions of co-operation "in the development and implementation of new environmentally sound low-waste technologies [Article 10, paragraph 2, under (c)]" as well in transfer [Article 10, paragraph 2, under (d)], and

Article 14 – Financial Aspects, which regulates questions of voluntary establishment of appropriate funding mechanisms necessary for the specific needs at first place of hazardous and other waste management

[554] The Montreal Protocol on Substances that Deplete the Ozone Layer as either adjusted and/or amended in London 1990, Copenhagen 1992, Vienna 1995, Montreal 1997, Beijing 1999.

and minimization (paragraph 1) as well as for emergency situations resolving (paragraph 2).

Framework Convention on Climate Change, precisely, with the:

Article 4 – Commitments, its':

Paragraph 1 under (c), call State Parties to "cooperate in the development, application and diffusion, including transfer, of technologies, practices and processes that control, reduce or prevent anthropogenic emissions of greenhouse gases not controlled by the *Montreal Protocol* in all relevant sectors, including the energy, transport, industry, agriculture, forestry and waste management sectors".

Paragraph 3, call developed Parties to provide "additional financial resources… including for the transfer of technology, needed by the developing country Parties", and

Paragraph 5, call developed Parties to "take all practicable steps to promote, facilitate and finance, as appropriate, the transfer of, or access to, environmentally sound technologies and know-how to other Parties, particularly developing country Parties, to enable them to implement the provisions of the Convention", and by

Paragraph 7 emphases that effectiveness of implementation will depend on the "developed country Parties… commitments under the Convention related to financial resources and transfer of technology" realizing.

Article 11 of the *Framework Convention on Climate Change* regulates, in details, "Financial mechanism" needed to fund technology transfer.

Convention on Biological Diversity also regulates questions of technical and financial cooperation. This Convention, by the:

Article 16 - Access to and Transfer of Technology, call Contracting Parties to obtain the access and transfer of technology under “fair and most favorable terms (paragraph 2)”,

Article 18 - Technical and Scientific Cooperation, call Parties to promote “Technical and Scientific Cooperation (Article 18, paragraphs 1-5)”,

Article 17, calls Parties to facilitate exchanging of needed information.

Article 20 regulates questions of “Financial Resources” needed for adequate national activities at the field of *Convention on Biological Diversity* implementing and realizing, obliging developed Parties to provide additional financial resources for such duties of developing Parties (Article 20, paragraph 2).

U.N. Economic Commission for Europe, Convention on the Transboundary Effects of Industrial Accidents[555], regulates questions of adequate response (by the Article 11), including participation and help of State Parties to State of pollution origin, to formulate adequate measures, as well as mutual assistance (Article 12), which also means technical assistance. This convention for the purpose of Transboundary effects annulling or minimizing regulates “Exchange of technology (Article 16)”.

As can be seen from examples, *Principle of Financial and Technical Transfers* has been incorporated in great number of legislative *Ecology Law* documents. Common line of all this documents is that they establish mechanisms for transfer of knowledge and technology between states that have signed those conventions, in the aim of really efficient protection of the environment. In this process main obligations are foreseen for the economically, scientifically and technologically most advanced countries.

[555] Convention on the Transboundary Effects of Industrial Accidents, U.N. Economic Commission for Europe, Helsinki, Document E/ECE 1268 [March 17, 1992].

11.11. Principle of Developing the Sustainable Development at the Level of National Legislature

Principle of Developing the Sustainable Development at the Level of National Legislature can be traced, as the all previously analyzed principles, at the levels of:

- International Environmental Policy,
- International Environmental Law, and
- National legislatures.

First efforts of importance for the *Principle of Developing the Sustainable Development at the Level of National Legislature* formulating can be observed and recognized through the Stockholm Declaration principles. This is obvious from the Stockholm Declaration:

Principle 21, which emphasize environmental policy role of the Charter of the United Nations and the principles of *International Law* for sovereign states, which means for their legislative systems, "to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction". This also practically means to ensure sustainable status of the environment,

Principle 22 that call States to cooperate at the international law level to protect from the environmental damages and to compensate for consequences of pollutions, which cooperation is not feasible without national legislative elements in harmony with the international law elements of importance for this problem. Practically this means that states are obligated to form adequate environmental law elements in accordance with the international law elements that treat problems of pollutions, damages and compensations,

Principle 24, which declared that "International matters concerning the protection and improvement of the environment should be handled in a cooperative spirit… through multilateral or bilateral arrangements… to effectively control, prevent, reduce and eliminate adverse environmental effects resulting from activities conducted in all spheres". We point that:

- Term "protection and improvement of the environment", from this principle 24, practically points at the sustainable development, as well that
- Calling on:
  - "multilateral or bilateral arrangements", by them on
  - "effective control, prevention, reduction and elimination of adverse environmental effects resulting from activities conducted in all spheres",

depict at the *developing the sustainable development* at the level of national legislature ways and logic, of course in the aim of international and efficient protection and improvement of the environment.

Principle of Developing the Sustainable Development at the Level of National Legislature, although not initiated under this name through the text of Stockholm Declaration, had been accepted at the level of *International Environmental Policy* and elaborated in Rio, through the Rio Declaration and Agenda 21.

If we read Rio documents, at first place Rio Declaration, we can recognize this principle as expressed on the implicit and explicit way through Principles: 3, 11 and 12. To be precise:

Principle 3, request from States to fulfill the right to development at such a way to fulfill, at equitable way, "developmental and environmental needs of present and future generations",

Principle 4, in order to achieve sustainable development, call States to constitute environmental protection, which means to constitute it at the levels of national environmental policy and environmental legislatures,

Principle 10 call States to provide participation of citizens, at the relevant level, through appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes, while

Principle 11, directly call States to "enact effective environmental legislation" hawing in mind that environmental standards, management objectives and priorities should reflect the environmental and developmental context to which they apply".

"Center of gravity" for the sustainable development principle is in the Agenda 21, document that as totality, from chapter to chapter, cultivates the idea of sustainable development:

- Inside part that treat building of settlements (Chapter 7),
- Using, and the protection of resources (Chapter 18),
- Develop of mechanisms for making decisions necessary for the protection of the environment (Chapter 8) and the other parts of text.

Principle of Developing the Sustainable Development at the Level of National Legislature can be also precisely traced through modern environmental policies and environmental legislatures, where are increasingly applied. For example, requirements of this principle are recognizable from the Sustainable Development Strategy in Switzerland[556] and after this environmental policy document in the

[556] Sustainable Development Strategy in Switzerland, Year 2002.

Switzerland Constitution[557], which established principal environmental norms as well as the obligation to respect legislative international law documents, which means *International Environmental Law* documents also[558]. *Principle of Developing the Sustainable Development at the Level of National Legislature* also can be recognized in the State of the author through the newest National Environmental Approximation Strategy[559], also from such older documents, as well in the Constitution of the Republic of Serbia (Articles: 16, 74, 194, *et cetera*) and, of course in the big set of environmental legislations.

[557] Switzerland Constitution, adopted by the Federal Parliament on: 18th December 1998, Adopted by Public Referendum on: 18 April 1999.
[558] By the Article 5, paragraph 4.
[559] National Environmental Approximation Strategy, *Official Gazette of the Republic of Serbia*, Year 2011 No 80.

CHAPTER 12

PUBLIC PROPERTIES' LEGAL REGIME AND ADMINISTRATIVE LAW ELEMENTS OF IMPORTANCE FOR THE ECOLOGY (ENVIRONMENTAL) LAW

12.1. Public Properties as the Elements of *Ecos*

Very important question for the *Ecology Law*, especially as the practical category, is legal regime:

1. of properties according to which *Ecology Law* regulates wanted relations,
2. which, at the same time, regulates protection, at first place penal, of the:
   - Environmentally important values, and
   - Legally regulated and established relations between subjects of law, formed towards the environmental values, or because of them,

3. of environmental values and properties, which are, at the same time, declared as special legal category of *public properties*.

Legal regime of public properties, practilally of any state, had been and is determined primarily by the norms of *Administrative Law*. On the question: Which goods belong to this category? there is no unique answer, neither by legislators nor at the field of legal science. Differences exist especially between French and German law school[560], also in the works of the authors from former socialistic, as well as the states across the oceans. Still, by the analyze of many authors' texts that elaborate this question, it is possible to establish adequate common picture, which indicates that in the public properties are included natural elements of the environment, between them especially mineral wealth[561], lakes, "water flows, seaside, air space[562]‘‘, and also coastal sea with sea bottom, public roads, protective forests, or forest zones[563]. All such goods have common feature - that are intended for general public use. In the category of public properties, according to the regulations present in the most of positive legislations, and UNEP documents, belong so-called "natural goods", as the assembly of the *ecos*' elements (the elements of environment), elements with special characteristics and importance.

Natural elements of the environment, which at the same time belong to the category of public properties, to be treated as public goods, are not obliged to get this status specially, which means, through the prescribed administrative procedure. We emphasized that such proceeding, for giving of this status, has to be started only for these goods that present human product. For example: Protective forests – anti-erosion plants, or

[560] Abut those distinctions see: Popovic, S. (1989) pp 766-768.
[561] Jellinek, W. (1928), p. 487.
[562] See, especially texts of: Bonard, Roger (2011) p. 547, De Labaudere, A. (1969), p 724, and Forsthoff, E. (1966), pp 326-328.
[563] According to the norms of the Republic of Serbia: Zakon o šumama (Law on Forests), from the year 2010.

protective forest zones[564]. But all of that doesn't mean that they can be treated only in accordance with some general rules. Quite contrary. Every of these categories of properties have been treated by particular legal texts from *lex specialis* categories. For example: Mineral wealth according to the laws concerning mining (in ex-Yugoslavia such laws had been located on the level of republics), woods and forests according to laws of forest (mostly republic laws), water flows which are crossing over the borders of two republics or the state border, in ex Federal Republic of Yugoslavia, according to the Law on the Inter Republic and Interstate Waters[565] internal-republic waters, for example: in Serbia by the Law on Waters[566], Continental Shelf sea zone and the bottom of the sea by the Law on the Coastal Sea and Continental Shelf Zone[567], and so on. Such logic of environmentally oriented legislative structure is obvious in many states. For example in the United States of America, where we can see parallel existence of legal acts, even with just the same name, but with different level of mandates for the environmental protection. Simple examples are acts oriented at the air protection. Readers can easily compare Clean Air Act of State Connecticut[568] and U.S. Federal Clean Air Act, from the year 1963[569] and 1970[570].

[564] See: Article 33, paragraphs 1-5, of the Zakon o zaštiti životne sredine (Law on the Protection of the Environment), of the Republic of Serbia.
[565] See: Zakon o međurepubličkim i međudržavnim vodama (Law on the Inter Republic and Interstate Waters) from the Year 1974.
[566] Zakon o vodama (Law on Waters) *Official Gazette of the Republic of Serbia*, from the Year 1991.
[567] See: Law on the Coastal Sea and Continental Shelf Zone, from the Year 1987 and 1989.
[568] See: Stern, A. (1982), p 46.
[569] Clean Air Act of 1963. See: Public law 88-206 (of the U.S.A.).
[570] See: US Code, Chapter 85—Air Pollution Prevention and Control.

12.2. Public Proprieties -- Governing and Protection

Rules for:

- Giving the management, as
- The management on the public proprieties itself,

are more or less precisely regulated, but, in any state, not with only one legal text. Attention has been dedicated for any public propriety by particular legal constructions, from *lex specialis* category, which regulate relations to: Mineral wealth, forests, water flows, national parks[571], *et cetera*.

Natural properties, which include:

1. National parks,
2. Natural reservations,
3. Natural goods protected on the base of international contracts,
4. Natural rarities; and
5. Regions with remarkable characteristics, that with cultural goods present ambient whole, and
6. Natural parks,

Are environmental values that are protected on the base of national legislatures, international contracts and with special government's acts with the legal power; such properties administer the organizations formed for the protection of natural and cultural proprieties[572]. In Republic of

[571] See: Republic of Serbia Law on the Protection of the Environment, from the Year 2004, Article 11 – Natural Properties, and Article 17 – Protected Natural Properties.
[572] In the case of the area-cultural entirety, for example: Monastery Studenica, at the theritory of the Republic of Serbia.

Serbia such role to take care about natural goods has "Republic Institution for the Protection of Nature", special administrative and experts organization of the Ministry mandated for the protection of the environment. Concerned institution has authority to control relations toward protected natural goods[573]. For that purpose institution can issue decision for temporary prohibition of works, if exists a doubt that concerned works can make a damage to natural proprieties that are not yet protected[574]. Clearly, then its' necessary to start a proceeding for setting natural good under the legal protection, at least in a period of three months from the day of decision making.

12.3. Using of the Public Proprieties -- Elements of the *Ecos*

Matter of public proprieties using we shall treat wider through our text, aiming attention to the group objects of the *Ecology Law* treatment[575], having in mind some differences in the access to the using of some public goods. At this place we shall point only at those elements that are common in their using, independently from the fact which group of proprieties is in question.

Using the public proprieties, the elements of the *ecos*, in principle is permitted. General obligation of the all subjects: Organizations and organs that govern with the ecological goods, is to hold concrete good in such status that this good can be used in their basic and natural purpose.

[573] According to Articles 13, 14 and 15, of the Law on the Protection of the Environment of the Republic of Serbia.

[574] Regulated, to the end of year 2004th with the Article 46, of the Law on the Protection of the Environment, of the Republic of Serbia, from the beginning of year 2005th with articles 16 – 19, of new Law on the Protection of the Environment, of the Republic of Serbia.

[575] In the studious mentioning on the matter that we have formulated and import in the law science as the notion and concept of the Ecology Law - Separate Part, in the process of developing of the Ecology Law as the branch of law science and legislature. About this, see: Joldzic, V. (1988 and 1990).

Regimes for the protection of such goods are different, depending to the fact is the actual good some kind of protected natural propriety, or is in question some other public propriety - natural element of the *ecos*. For this second category has been generally regulated that is "prohibited to destroy or damage their natural quality[576]" and using is permitted on the different ways and in the different circumference, depending about which category is in question[577].

Public properties that are also the elements of the *ecos*, attained to the direct and collective use, as this is the case with protected natural proprieties, air, water streams or sea coast, in principle can use all the physical and artificial persons. Of course, it is necessary to differentiate so called "general collective using" and the "anonymous using", by the physical persons (for example: using of the water streams[578]), from the particle individual using.

Common collective and anonymous using means that any of characteristics: Biological, hydrological, geological, geomorphologic, cultural, and the other, will not be imperiled, or changed, by using, accordingly with their legal regimes of using and protection. In principle, for such using it is not necessary to request special permission, by which act such using will be precisely regulated and given to concrete person, physical or artificial.

Particular individual using means such using that in some measure changes qualities of proprieties for which has been made request for using. Such case is, for example, the permission for using the sand, or gravel, from the river, permission in accordance with the norms from the

[576] See Republic of Serbia legislature, Paragraph 1, Article 49, of the ex Law on the Protection of the Environment, from the year 199[1], as well as the supra note 2 of the Article 17 from the actual Law on the Protection of the Environment.
[577] Compare Articles 16 – 18 of the previously mentioned positive Serbian law.
[578] See: Popovic, S (1989), p 777.

law on waters[579], federal or republic law - which depends from the fact which river is used, thus, submit to changes: River that flow, or do not flow, across the Republic, or State border. By such permission, it is established right of individual using. It is logical that such using has to be in accordance with the basic law formulated for the protection of the environment, also in accordance with concrete *lex specialis* that more precisely regulate relation toward observed propriety: Woods, minerals, waters and so on.

As we can see, in all the mentioned steps of the environmental protection:

- Defining the status of ecos' elements,
- Approving, or
- Prohibiting use of those elements,
- Regulating relations toward them, and
- Establishing and regulating the supervisions of the norms of ecological importance respecting,

are present elements of the *Administrative Law*, which, once more, point out on the multidisciplinary nature of the *Ecology (Environmental) Law* discipline.

[579] Such legal approach is just the same as in the EU, which can be seen from *European Court reports 1996*, page I-05403, that expressed results from *Case C-72/95*, which treat approach to works on river, as well as using of rivers resources. Court concluded, in accordance with EU Directive 85/337 that any work, from the mentioned case also, has no right to hit natural qualities and resources of river, including raw material.

CHAPTER 13

ADMINISTRATIVE LAW ELEMENTS OF IMPORTANCE FOR THE ECOLOGY LAW DEVELOPMENT AND APPLICATION

13.1. Generally about the Administrative Law Elements of Importance for The Ecology Law Development and Application

Ecology Law, at the level of inner-state legislation, through processes of development and using of its autochthonous norms, as well as using norms located in the other law branches, but norms that do, or can do, ecologically protective functions, in great measure base itself on the rules of the *Administrative (State) Law*. Primarily when contribute to the forming of necessary apparatus that control *Ecology Law* norms respecting, as well as the rules that regulate such apparatus working.

In process of their ecologically protective functions realizing, organs of the state administration, and organizations that have mandates for some kinds of works (as authorized subjects)[580], on the base of their authorizations, toward other precisely determinate subjects, come out "in the name of the

[580] For example, hydro-meteorological institutions, for air soiling at the inner territory, as well as for transboundary soiling.

state[581]‘‘, with stronger will, on the base of rule adopted from the *Administrative Law.* Authorized subjects bring their conclusions mostly in the form of *decision,* on the base of norms that regulate same wanted side of ecological relation - relation that is at the same time public relation, considering the character of goods[582] that are protected by those acts, as well as norms that are base for their authorization, for such relations establishing. On the other word, decisions of the organs that do some ecology protective function must have, obligatory, so cold *visa of law text* calling, in the process of legal act bringing, on the concrete legal base for this act. As the *Ecology Law* matter mosaic is regulated by the norms located in legal and so cold sub-legal constructions, for the area of ecological relations, as for the area of public relations, is important fact that concrete case can be regulated only on the base of legal norms, and that in this process so cold sub-legal norms have only the function of so cold blanket norms (addendums). Blanket norms supplement the law being structure of concrete legal norms, thus giving them more preciseness. Sub-legal text under any condition can not be in the independent role of the *visa* of legal text.

13.2. Ecology Law Norms Nature and their Mutual Relation with the Administrative Law Elements

Ecology Law norms have imperative character. This means that such norms have forced nature (*ius cogens*), practically the same character such the *Administrative Law* norms possess[583]. Those norms have function to precisely form the ecological, as, at the in-state level, in principle, *Public-Law* relations. Subjects treated by such norms have obligation to do precisely on the way prescribed by *Ecology Law* norms. From this reason, as in the

[581] Lilic Stevan: Upravno pravo (Administrative Law) p. 211.
[582] About public proprieties we have discussed at previous pages.
[583] About *ius cogens* logic see more at Popovic, S. (1989), p 17.

Administrative Law case, essential characteristic of the *Ecology Law* relation is that it is relation between two sides, from which:

- One side has right, or mandate, to do something, or to require from other law subject to do something, and
- Second side is in obligation toward requirement of the first side to restrain itself from same commitment, or to commit on the base of the requirement.

Law rules of importance for the protection of environment are defined, as we already pointed, by: Laws and general sub-legal acts, by which rules, placed inside laws, are completed and concretized. General sub-legal acts have forms of: *regulations*, *orders* and *instructions*, as this problem is, at the level of the Republic of Serbia, regulated by Articles: 76-91 of the Law on the State Administration[584]. "Regulations, orders and instructions brings official that govern the administrative organ[585]". This means: Minister for the Science, Development and the Environment, if we observe the Republic of Serbia, as example. Of course ministries for the environment are present in most of the modern states[586].

By regulation, in accordance with rules and norms of the *Administrative Law*, from the Law on the State Administration[587], are worked out some

[584] See: Republic of Serbia Zakon o državnoj upravi (Law on the State Administration), from the year 1992.
[585] Lilic, S. (1995), p 211.
[586] For example:
Germany – Federal Ministry for the Environment, Nature Conservation and Nuclear Safety, Greece - Ministry for the Environment, Physical Planning and Public Works,
New Zealand – Ministry for the Environment Partnership, Iceland - Ministry for the Environment, Italy - Ministry for the Environment and Territory, Norway - Ministry for the environment, and many others.
[587] For example in: Austria –State Administration Act, of 2004, The Danish State – Public Administration Act, Act No 571 (19 December 1985), Serbia –Law on the State Administration, *Official Gazette*, Year 1992, No 20,
Norwey,- Public Administration Act of 1967; or Slovenia –Law on the State Administration System, *Official Gazette* Year 2003 No 190, *et cetera*.

legal norms and the acts with legal power. These acts, from State to State, bring federal government, or governments of republics.

By orders are prescribed some actions in accordance with norms of the some concrete law.

"By instructions are prescribed the way of working and performing the affairs of the state administration organs[588]", as well as of institutions and organizations that perform affairs of interest for the protection of environment.

If we observe our example: Serbia, by Constitution (from the year 1992), all laws of provinces had been canceled; between them all that threat *Ecology Law* matter. From this year provinces only fulfill tasks at the area of the *ecos'* protection, tasks determined by laws, regulations and orders:

- Passed at the ex-federal (from this level inherited), and
- Formed on the level of Republic.

This is not strange solution, although we know that in some modern complex states, such is French Republic, all the laws that treat ecology matter are located at the one - central state level. Many states have the architecture of the environmental legislation as former Yugoslavia had. Such states are, for example: United States of America, Republic of Germany, or Australia. All the mentioned states have environmental legal acts in the same moment at the central and at the level of constitutive parts of the state.

[588] Lilic, S (1995), p 211.

CHAPTER 14

ORGANS IN CHARGE FOR PUTTING IN LIFE THE ECOLOGY LEGISLATURE

14.1. Generally about the Organs in Charge for Putting in Life the Ecology Legislature

In accordance with general law rules and definitions of administrative legislature, at the area of putting in life the *Ecology Law* and legislature, we can distinguish, as forms of administrative organs, *ministries*, *secretariats*, *departments* and *inspectorates*, while as the forms of administrative organizations can be distinguished *institute offices* and *main (head) offices*. Some, for example: Ministry for the Science and the Environment of the Republic of Serbia, care on the environment has as one of two main duties[589], some other organs this function do parallel to their basic duty. For example: Ministry of Traffic and Sailing of the Republic of Monte Negro take care on the sea good[590].

[589] Parallel to science field duties.

[590] According to the Article 10, of the Monte Negro Republic Zakon o državnoj upravi (Law on State administration), from the Year 1993.

14.2. Inspectorates, their Place and Role

Resolving of some concrete *Ecology Law* thing, in formal sense, goes through:

1. Opening of proceedings,
2. Progress of proceedings, and
3. Making decision from the side of authorized administrative organ, more often by the authorized person from the inspectorate as the official part of some administrative organ.

Thus, generally, for these proceedings, as for any other, we can also say that it is the *procedure of decisions' making*. In formal sense: *proceedings of making the administrative acts*, mostly by the authorized inspectorate services.

Those proceedings can start by formal request which submit directly interested side, because, for example, this side is under the influence of some pollution. In such case request is in *ex privato* form. Of course, for the purpose of the public interest protecting, such request can be submitted from some inspectorate, or the organ authorized to do some precisely defined inspectorate duty, on the *ex ofittio* base.

Inspectorates have great significance for the ecology protection problems. In accordance with *Administrative Law* definitions, "inspectorates are a form of the administrative organs, formed for the inspectorate supervision. Inspectorates' duties in Republic of Serbia are accomplished by the particular departments of ministries[591]", more often at the level of a district. According the Articles 109 -115 from the Law on the Protection of the Environment of the Republic of Serbia, for the protection of environment had been formed inspectorates, from the level

[591] Lilic, S. (1995), p 96.

of Ministry downward to the local comunities. Of course, by this legal act is in no way stopped any parallel work of the other inspectorates, and organs with inspectorate's authorization, aimed to the environmental protection.

Administrative organs in the *inspectorate supervision* of respecting the *Ecology Law* norms are, by legislature, authorized to pronounce diverse administrative measures. Thus, they can pronounce *decision* by which is stopped work of polluter, or ordered building of some filter obligated by the law. It is clear that all such legal acts are acts of force, in accordance with the principles of law and positive legislature, on the *ius cogens* base. Such acts bring service of inspectorates. Some of the services are oriented only at the environmental protection, other do their parallel function of environmental protection through the process of some other basic inspectorate activity. For example: Sanitary inspectorate, water-economy inspectorate, forestry inspectorate, and the others. Having these facts in mind we think that is necessary to turn over attention, although in smaller measure, at the work of such inspectorate services. This especially because that some rules of their work, as well of the limits in their activity, are of utmost importance for the observing the ecology protection inside any State.

Sanitary Inspectorate, doing so cold sanitary supervision, on the base of the visa of law texts, calling on different material-law norms, contributes to the protection of the environment and human health, with activities expressed by the supervision on:

1. The selection of location and building the object - by so called preventive sanitary supervision, by this act protecting the elements of environment,
2. The prevention and eradication of communicable diseases - that is, in fact, human health protection,

3. The production and turnover of food (preventive-healthy protection) and common good[592] - that is clearly ecology-protective function,
4. The application of protective measures through the work process and on the work place[593],
5. The sources of ionizing radiation[594],
6. The production and turnover the medicaments[595] and poisons[596],
7. The waters[597], and
8. Refuse materials[598].

At the other words, sanitary inspectorate bases work on a large number of very precisely formulated legal and sub-legal texts, by which this inspectorate works very complex and diverse activity[599].

Inspection of work, in other words organ competent for such affairs, contributes to the protection of narrower - work environment, but also to

[592] See: Republic of Serbia Zakon ispravnosti namirnica i predmeta opšte upotrebe (Law on the Health Correctness of the Food and Articles of the Common Good), from the Year 1978 novelized at the Year 1988 and after that changed at the same Year and again at the Year 2011.
[593] Regulated by many laws. For example, in the Republic of Serbia, by Zakon o zaštiti od jonizujućeg zračenja (Law on the Protection of the Ionizing Radiation and Nuclear Safety), from the Year 1991, and the Zakon o rudarstvu i geološkim istraživanjima (Law on Mining and Geological Survey), from the Year 2015.
[594] On the base of the Law on the Protection of the Ionizing Radiation and Nuclear Safety, from the Year 2009, with amendments from the 2012.
[595] For which doings *visa* of the law text has been précised, for example, with the Republic of Serbia Law on Medicine Putting on Sale, from the Year 2010.
[596] Zakon o proizvodnji i prometu otrovnih materija (Law on the Producing and Putting on Sale the Toxic Substances), from the Year 1995.
[597] For water inspectorate control and the protection, *visa of the law text* has been given, for example, by the Law on Waters of the Republic of Serbia, from the Year 1991.
[598] For example see old Zakon o postupanju sa otpadom (Law on Waste Management) from the Year 1996 and actual Zakon o upravljanju otpadom (Law on Waste Management), from the Year 2009, formed at the level of the Republic of Serbia.
[599] About the work of the sanitary inspectorate see more at the Popovic, S. (1989), p 464.

the wider - life environment. In our example, Republic Serbia, as in the other European States, such inspectorates are present at all levels, from Republic to the level of local communities (communes). The competence of such organ includes supervision of the respecting of norms that regulate the protection of working environment as well as of working place bad influences. For example: at mines, chemical factories, *at cetera*.

Market Inspectorate, in his framework performs supervision of the products quality, according to the norms that regulate such qualities. Thus, by such doings contributes to the environmental protection from negative influences of products, through their usage and at the end of their service life[600].

Veterinary Inspectorate is obligated for the protection of livestock fund healthiness. In modern States is present from community to the level of State.

Agriculture Inspectorate "performs supervision on the putting into effect the regulations that treat using of the agriculture land[601]‘‘, which land is *de iure* not only economical, but also law-ecological (environmental) value. Organs of the agriculture inspectorate, in Serbia for example, exist, hierarchically organized, from communes to the level of Republic, which means Ministry competent for agriculture. Agriculture inspectorates are obligated to do the inspection of agriculture land and objects, and they can, on the base of law, "to prohibit using of the agriculture land for another purpose[602]‘‘. If they find some other illegal actions, they have obligation to stop them. Agriculture inspectorates also can to order measures for the prevention of harm, if this harm will hit the

[600] In the Republic of Serbia so cold *visa of the law text* has been located, as in the other states, in the Law on the Standardization [Zakon o standardizaciji (Year 2009)].
[601] Popovic, S. (1989), p 466.
[602] Ibid, p. 466.

public interest[603]. From the Federal law level, Serbia inherited, as successor of Yugoslavia State, duties defined by the International Plant Protection Convention[604], by which regulative legal text organs authorized for the agriculture inspectorate work can order measures for putting into effect definitions from the Convention concerning this matter.

Plant Protection Inspectorate perform supervision on the legal norm's respecting, and on that legal base formed orders of the authorized organs, aimed on the plant's protection - protection from diseases and pests. Material-legal base for such plant's protection had been placed at the Federal level, into Law on the Plant Protection from Diseases and Pest that Imperil All the State[605], now in competency of the Republic of Serbia, by the act of inheritance. In this moment Serbia also possesses, as the other modern States, one more crucial legal act of the importance for this matter: Law on the Agricultural Land[606].

Dealings of **Forestry Inspectorate** "do administrative organs, authorized for the forestry commitments[607]" at the level of communes. Administrative organs of the Republic and provinces coordinate the dealings of communes' inspectorates. Forestry inspectorate performs supervision on the legal norms' respecting - norms that regulate matter of

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[603] Details of the *visa-s' of the law texts* for such orders are located primarily in the Zakon o poljoprivrednmom zemljštu (Law on the Agricultural Land), from the year 2006.

[604] See, at ICOLEX:
International Plant Protection Convention [IPPC], adopted by the Food and Agriculture Organization of the United Nations [FAO] in Rome, at June, 12, 1951 (entered into force in 1952), *International Plant Protection Convention* [IPPC] - Revised Text of the Convention, adopted in 1997 (entered into force in 2005).
International Plant protection Convention has been ratified by Yugoslavia at November 2, 1952. More about this see: Joldzic, C. and Miliocevic, G. (1995), pp 50-51.

[605] Zakon o zaštiti bilja od bolesti i štetočina koje ugrožavaju celu zemlju (Law on the Plant Protection from Diseases and Pest that Imperil All the State), from the Year 1989.

[606] Zakon o poljoprivrednom zemljištu (Law on the Agricultural Land), from the Year 2006.

[607] Popovic, S. (1989), p 467.

forestry: Cultivation, exploitation and protection[608]. At this way forestry inspectorates treat forests as the ecological good, not only as economical.

Construction (**Building**) **Inspectorate** performs supervision on the respecting norms that regulate invested building[609], before all: Does the investor in process of building, or reconstruction, of the object, respect norms that are aimed at the protection of the environment? Organs that are authorized for such inspectorate dealings are located from the commune to the Republic. Such organs have obligation and right:

1. To order correction of noticed irregularities, and to get the defined time limit for such work, as to
2. Order to hold the process of building, or reconstruction, if this is not in accordance with the officially documentation, by which has been permitted building or reconstruction,
3. To order holding of building or reconstruction, if this has been started without official permission, and
4. To order holding of building, or reconstruction, if noticed irregularities have not been corrected in the assigned time limit[610].

Organs that are obligated for official dealings, as inspectorate, can even order overthrowing of those parts of objects that have been reconstructed, or built, if they have been done at such a way that they not guarantee security of object, and/or environment and human healthiness. Presumption for such order is that irregularities cannot be corrected at some other way[611].

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[608] In the Republic of Serbia those norms are located primarily at the Zakon o šumama (Law on Forest, Year 2010), especially at the Article 40, paragraph 2 of this law.

[609] Zakon o izgradnji objekata (Law on the Building of the Objects), formulated at the Year 1984 and again at the 2009.

[610] About this problem see also Popovic, S :*Administrative Law - General Part*, p. 468.

[611] About this matter see more at Joldzic, Vladan (1990) Role of the Law Science and Legislature in Protection and Progress of the Environment, pp 2-45.

Miners Inspectorate, alike building inspectorate, give permission for building and using the object, perform supervision of all kinds of miner's objects, installations and machines, from two reason:

1. Permanent security of work environment, and

2. Stooping the environmental pollution.

If we observe our example, Republic of Serbia, this had been present in the norms of earlier laws that had treated mining, and is present in the actual Republic of Serbia Law on mining from 1995.

Beside mentioned inspectorates, which are most known to the public, there are a number of inspectorates, and departments that are also authorized for inspectorate dealings, organs which also do an number of environmentally useful duties. For example, naval captains perform supervision of the accuracy of naval objects and their installation and machines, and establish does they pollute (illegally) or not, from the reason of erroneous working of objects. Material-legal norms, as base for such supervision are located in legal acts as the Serbian Law on Waters[612], ex-Yugoslavia Law on the Sea and Air Sailing[613], Bulgarian Law on the Sea Spaces, Inland Waterways and Ports[614] and the others.

Communal Inspectorate performs supervision on the communal hygiene.

Hunting Inspectorate performs supervision on the respecting of Law on Hunting[615] and the protection of wild animals[616].

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[612] Zakon o vodama (Law on Waters), from the Year 1991.
[613] Law on maritime and inland navigation, from the Year 1977.
[614] From the Year 2000.
[615] See, for example:
Latvia - Law on Hunting (1995). Source: Latvian Environment Data Centre.
Bulgaria - Law on Hunting and Game Protection, from the Year 2000.
[616] Zakon o lovstvu (Law on Hunting), from the Year 1993.

Fishing inspectorate, founded by laws on fishing, such is old Serbian Law on Fishing[617], or Swedish The Fishery Law[618].

14.3. Authorities, Duties and Proceedings of the Inspectors in the Position of the Environment Protection Performing

At the area of the environmental protection, duties and authorities of inspectorates' departments as well as inspectors alone, are diverse from law to law that regulate their position and dealings, as we have seen through previous part of text. It is really hard to describe dealings of inspectors, but it is possible to find some common denominators from the laws that have been described in our book.

Protecting of the environment, diverse dealings of inspectorates, can be manifested, before all:

1. Through supervision of business books, documentation, wares, and office spaces,
2. As issuing of temporary orders, in forms of:
   - Records, and
   - Administrative acts,

- If inspector founds:
  - Irregularity in work, or
  - That previous orders from authorized organs had not been done,
- By temporary orders can be précised:
  - Correcting of the founded irregularities, also can be précised
  - The limit of ordered measures, and

[617] For example, in Serbia, with Law on Fishing, from the Year 1976 and 1988.
[618] The Fishery Law of Sweden, Year 1993.

- The final time for their finishing[619],

3. By ordering to do some the insurance measures, by administrative act in case of "danger for the environment[620]",
4. With legally required licenses giving (permission), for defined work, to the economical subjects, if they satisfy specific conditions for concrete activity, according to the Law on the Building of the Objects, Law on the Producing and Putting on Sale the Toxic Substances[621], Law on Agriculture Land Using[622], or by another law connected with the activity for which permission has been requested.

In their work inspectors will be responsible if they:

1. Omit the supervision measures that they are obligated to do, by the legal rules,
2. Omit the undertaking or determining the measure, or measures, in the concrete case, on which concrete law obligates them,
3. Exceed the limit of authorization by law, and
4. Omit the charge that has to be brought to competent organ, or omit the information about founded violations of legal norms on the environmental protection.

If in his official dealing inspector "establishes that is present base for some measures undertaking, for which is authorized some other organ, he

[619] For example, on the *ius cogens* principle, can be ordered installation of the filters for smokes, building of the chimneys at the determined height and the other.
[620] Popovic, S. (1989), p 476.
[621] See, also: New Zealand - Toxic Substances Act of 1979, USA - Toxic Substances Control Act, from the Year 1976, effective from the1st January 1977, and many others.
[622] Such is the Agriculture Land Act of the Republic of Serbia, from the Year 1992. Such legal texts are present around the World. See, for example: Czech Republic – Law on Protection of Agriculture Land [Act] and
The Agriculture Land Act of Zambia.

is obliged to promptly inform this organ[623]‘‘. If in his work inspector establishes some acknowledgement on the violation of law that belongs to the category of:

- Delicts, or
- Crimes,

he is under the obligation to bring official request, to the competent authority, for the start of adequate proceedings. Organ whom that request has been brought is obliged to inform about the results of the concrete proceedings the organ whose inspector has brought the request for proceedings, or the criminal charge.

At the level of Republic of Serbia specially was regulated that “supervision on the application of measures for the protection of: Air from pollution, natural goods, protection from noise, dangerous substances’, ionizing radiation, *et cetera*, perform inspector especially authorized for the protection of the environment[624]. In Monte Negro State such inspectorate has been formed at the year 1996.

By laws of many States has been regulated that against inspectors’ decisions can be submitted formal protest. As, by the rule, decision brings communal inspector, it is logical that protest can be submitted to the immediately higher instance. If it is in question protest against decision based on the norm, or norms, for example of the Republic of Serbia Law on the Protection of the Environment, such protest:

1. Against the decision form the Municipality inspector has to be directly submitted to the ministry competent for the environmental problems, in the Republic of Serbia to the Ministry for the Science and Environment,

[623] Popovic, S. (1989), p 477.
[624] Article 91, paragraph 2, Law on the Protection of the Environment of the Republic of Serbia, from the Year 1991.

2. In the case when the decision had been made by the communal inspector at the municipality level, but from municipality of town, has to be submitted to the town inspectorate, as the immediately higher administrative organ,
3. In the case where at the first level concrete decision has brought the organ from the town (for example: Belgrade), as a rule, immediately higher competent organ for the decision in connection with the concrete protest is competent Ministry.
4. If is in question the decision formulated at the first level by competent Ministry, in that case, as the immediately higher organ, proceed Government of the Republic of Serbia.

"Rule is that any protest do not stop the executing[625]" of the ordered measures. Exceptionally, organ that ordered this measure, can permit delay of execution of concrete measure. This can be done under the condition that the obligated side requests delay of concrete measure, and prove that such measure will product great material harm that cannot be avoided on the other way[626], but only in condition that such delay will not endanger human health, or product some other considerable harm.

In some legal texts has been formulated possibility for the inspecting organs to get dealings of measures to some other subject, on the expense of the subject against the measure has been brought, if the obligated subject has not done measure or measures on which has been obligated[627].

[625] P Popovic, S. (1989), p 478.
[626] Ibid.
[627] This opportunity has been made with the Yugoslavia Article 113 of the Basic Law on the Waters, from the Year 1965, No 13, and later developed through more laws. See: Popovic, S. (1989), p 479.

CHAPTER 15

ENVIRONMENTAL PENAL LAW ROOTS, LOGIC, FUNDAMENTAL BASES AND GUARANTIES FOR THE ECOLOGY LAW RIGHTS, OBLIGATIONS, DUTIES AND RESPONSIBILITIES

15.1. Generally on the Environmental Penal Law Bases, Historical Paths and Ways of Development

Text that we have presented at previous pages treats a number of specific questions of importance for Ecology Law observing, especially its' so cold General Part. All the examined elements are of utmost importance for the Ecology (Environmental) Law establishing and existing as the independent and applicable law discipline. They had been grouped into four logical entities:

Part I - Entering into matter of Ecology Law,

Part II - Special significance and roles of Constitutional Law and International Public Law elements for the Ecology Law,

Part III - Ecology Law Principles, their roots, structure and significance, and

Part IV - Public properties' legal regime and Administrative Law elements of importance for the Ecology Law.

But if we wish to have Ecology Law as the scientific, at the same time practical science discipline, we also need adequate guaranties which will enable this. Such guaranties are, at the first place, of the Penal Law category. Or anything previously observed and pronounced will not be transformed from ideal logical constructions into real and practically applicable law knowledge and legislative product.

From this reason we have started special project: Environmental Penal Law – Roots, Logic and Structure of Environmental Misdemeanors, as the part of Project 47011 – Crime in Serbia, phenomenology, risk and social prevention, macro project of the Ministry for Education, science and technological development of the Republic of Serbia Government, as the authors' wider reflections:

1. On the Environmental Penal Law, possibilities to excerpt it as a special law theoretical and practical discipline, as well as
2. On its Environmental Penal Law roots, logic and structure[628].

To be more precise, this part of study work discuses specific part of Penal Law that treats a number of environmentally oriented questions connected with so cold administrative misdemeanors and crimes. As such at first place demands some kind of general introduction. Introduction that any deep analyze of offences require. Introduction from the simple reason

[628] First theoretical elements that primarily treat questions of environmental crimes as well of penal politics connected with such incriminated acts se in: Joldzic, V. (1995a, 1995b, 2007a), books that treat criminal, disciplinary and material responsibility for environmental pollutions, in Republic of Serbia and in the Word, as well as the expressed penal politics at the field of environmental protection.

to explain that matter which we treat in our process of researching has the same general roots as the entirety of offences. From this reason please allow us to start with the old but unavoidable elements.

Penal Law generally, but at first place penal legislatures, have been products of historically long time development processes that posses roots in dark times of slave holding communities. Originates from many at those times actual reasons, but we have relatively complete Penal Law strains, applicable in our times, no sooner than from feudal states. Good example of such legislation is *Constitutio Criminalis Carolina* (or simply *Carolina*), the first German Criminal Law (Strafgesetzbuch), from the Year 1532[629]. This legislation is perfect example that governing parts of societies at the first place formulate, incriminate and put under variety of sanctions all behaviors that affects authorities, but that also, through the time, form more and more new elements that treats behaviors (doings and omissions of doings) that endanger or harm not only authorities and classical values and qualities, such are life and goods, but many other values too. At such a way had been created, to say at the actual way and with the modern law language, crucial elements by which can be formed: Separate Part of Criminal Law. So cold General Part, part that treats principles of Penal Law had been non-existing until the time of modern French State creating.

French jurist are those lawyers that for the first time in law sciences, and at the same time in the practical work, formulated idea to:

1. Separately treat and regulate *principles* of the Penal Law, as well as
2. Extract as distinct subject matter *misdemeanors* (offences), and to
3. Systematically treat fundaments and conditions of culpability and punishability.

[629] See more at the: Geus, El. (2002).

To be precise, their product had been expressed through French Penal Code of the Year 1791[630] and cultivated with the so cold Code pénal napoléonien[631].

Special importance of Code pénal napoléonien had been expressed through the fact that this text is first penal code which differentiated delicts[632] as three categories of graveness:

1. Criminal doings characterized with harder riskiness and (or) repercussion, named "crimes",
2. Easier kind of criminal doings, named "offences", and
3. So cold "contraventions" as easiest between punishable acts.

Throughput of time indicated that although named categories of delicts are products created on the necessity and request of social reality, they are not complete answers. To form adequate vision what to do, once again helped us law history knowledge. Cognition that Roman Empire possessed from crimes segregated kind of culpable acts, so cold administrative violations, or misdemeanors, as minor infractions of the laws. Necessities produced, once again, this kind of distinct and punishable acts that, basically, treat human doings contra elements of State apparatus elements, or to say at the another way: Human doings that hit norms which regulate working of the State apparatus[633]. Nowadays all modern States:

1. Possess such legislatures that basically regulate fundamental and principal questions of misdemeanors[634], so cold primary or

[630] Originally named: Code Pénal du 25 septembre – 6 octobre 1791.
[631] Officially named as Code Pénal de 1810.
[632] Delict, from Latin *dēlictum*, a fault, crime, from *dēlinquere*, to fail, do wrong; see: delinquency. Collins English Dictionary – Complete and Unabridged, Year 1991.
[633] See more on misdemeanors: Joldzic, V. and Jovasevic, D. (2013).
[634] Misdemeanors are also generally named as: infraction(s), correctional offence(s), trespass(s), violation(s), petty offences(s), infringement(s), *et cetera*.

basically misdemeanors legislatures, named also as basically law on offences, as well as

2. Many acts that treat numerous questions of importance for state apparatus functioning, as well as many other elements of adequate functioning[635], so cold secondary misdemeanor legislature (secondary law on misdemeanors).

However, although we can treat misdemeanors law and legislatures as separate, integral and independent disciplines, it is obvious that these disciplines can't automatically and independently solve many problems. Especially problems and matters of new law disciplines, between them questions of really new discipline: *Ecology (Environmental) Law*[636]. This is problem which we discus in our text, pointing at all the connections between *Ecology (Environmental) Law* elements and general principles and elements of the *Misdemeanors Law* and legislatures, through analyze of the Republic of Serbia and foreign legislations, in our efforts to form specific and independent law and legislature discipline: Environmental Misdemeanors (Offences) Law.

[635] From those numerous reasons forming:
Customs violations,
Disciplinary offences,
Road traffic offences,
Fiscal offences,
as many other to.

[636] On necessary steps to form Ecology (Environmental) Law discipline as well as special environmentally oriented legislatures see, especially: Joldzic, V. (1988, 1996a, 1996b) and Joldzic, V. (2009b), pp 127-169.

15.2. Environmental Delicts, their Places, Logic and Role in the System of Penal Law and Legislature

Author of this text formed logic how to approach to the matter of environmental offences, having in mind a number of differences that Penal Low branch possesses, comparing it with the Criminal Law and legislatures generally.

At first place we strongly point at the fact that the same total logic of Criminal Law is not possibly to enforce generally on the mosaic of all the environmental violations. This means: Not to automatically apply at all the environmental delicts logic necessary for:

- Differentiating, and
- Locating,

that can be applied on the Criminal Law.

Let us to explain this briefly. While we can Criminal Law observe as the entity formed through:

- At first place, norms of so cold *Basic Criminal Law*, norms located in the texts of Criminal Code(s) or criminal legislations[637], and
- *Secondary* (Subsidiary) *Criminal Law*, constituted from many criminal law norms (articles) integrated in numerous but mutually difference legal acts, which treat different problems, acts that basically are not criminal laws, but posses a number of criminal articles, commonly near the end of observing texts,

[637] See logic of criminal legislatures, for example: French Penal Code of 1994 (Code Penal Français, *Journal officiel* du 2 février 1994.),
German Criminal Code [Strafgesetzbuch. Ausfertigungsdatum: 15.05.1871. Vollzitat: "Strafgesetzbuch in der Fassung der Bekanntmachung vom 13. November 1998 (BGBl. I S.3322)], and
United States of America logic of Federal Criminal Code and criminal laws of republics.

At the same time misdemeanors (infringements) legislatures are constituted from:

1. At first place, in every state, special legal act that regulates this law breach generally[638], this means that induct:
   - Who can be subject of misdemeanor,
   - Forms of misdemeanors expressing,
   - When and under which conditions can be manifested responsibility for misdemeanors,
   - Constitutive elements of complicity,
   - When and under which concrete conditions misdemeanor can be excluded in concrete cases,
   - Which kind of sanctions and/or protective and pedagogic measures can be pronounced,
   - Propositions under which illegal profit can be confiscated, and
   - Propositions for sanctions canceling.
2. Special laws that establish concrete misdemeanors and with them connected sanctions, as well as in some number of circumstance, protective and/or pedagogic measures, in respect of generally established principles of Misdemeanor Law and legislature.

Such logic also has been strongly installed into the authors' native country (Republic of Serbia) legislature. From this reason for us are of utmost importance not only actual Law on misdemeanors but also all the legal acts that posses articles on misdemeanors, of course, especially environmental misdemeanors.

[638] Such example is Act on misdemeanors of the Republic of Serbia from the Year 2005.

In actual time it is more than obvious that all the states, Republic of Serbia between them, are in the process of fast processes of economical and cultural developments, from those reasons of accompanied legislatures developments to. Process of such development expressed through forming regulatory rules at two levels: At first place regulating needed processes and correlations and, secondly, at the same time sanctioning unneeded and antagonized to established rules of doings. Majority of the states forbid:

1. Criminal acts, and
2. Misdemeanors.

A lesser number of states, while adopt such categorizing of criminal versus misdemeanor acts, also differentiate criminal acts as distinct categories:

1. Crimes, as hard category, occasionally naming them “heinous crimes”,
2. Easier kind of criminal doings, named “offences”, and
3. So cold “contraventions” as easiest between incriminated acts,

as was firstly done in the *Code pénal napoléonien.*

Republic of Serbia, having specific way of political development, institutionalized not two but tree categories of penal acts:

1. Criminal acts,
2. Economical offences, and
3. Misdemeanors.

About such categorizing of penal acts author had discussed in detail in his earlier books[639].

Author, within the scope of Macro project 47011 working, treated numerous questions connected with or originated from environmental criminal acts, presenting results through book (study): Environmental Criminal Acts, International and Constitutional Fundaments, Reality and Possibilities[640], explaining more than 40 environmental crimes, their inherent dangerousness and consequences, pointing at the fact that such acts are more present than we usually mean. But our researching also indicates that such penal acts are far less present than environmental contraventions. From this reason we, at the second phase of our researching on the Project 47011, oriented attention on numerous questions that can be extracted at the field of environmental values and rights protection with the misdemeanor norms.

Serbian Law on Misdemeanors (from the year 2005), starting from the Article 2 - Act on Misdemeanors Definition, paragraph 1, define misdemeanor as illegal, offended and performed doing which is by the norm designated as misdemeanor. Also that misdemeanor does not exist (on the base of Article 2, paragraph 2.) if it is not present:

- Illicit, or
- Culpability.

Misdemeanor exists:

- If competent organ enact it through adequate legal procedure, and
- If is such act come into force.

[639] See: Joldzic, V. (1995a), p 47, and Joldzic, V. (1995b), pp 27-45.
[640] See: Joldzic, V. and Jovasevic, D. (2012).

Of course, nobody can be punished for misdemeanor if such concrete doing had not been previously enacted and sanctioned[641].

Question is: Who can enact some misdemeanor? This is in Serbia defined with the Article 4 (paragraph 1) of the Act on Misdemeanors, which appoints that "misdemeanors can be enacted by legal act or by regulation, as well with decisions of the province parliament, parliaments of towns, as well as of Belgrade Capital".

Second question is connected with kind and spread of sanctions. It is precisely written that "organs competent for misdemeanors acts enacting can prescribe only sanctions and protective measures that are defined by the Act on misdemeanors and within limits that this act define (Article 4, paragraph 2)". Act on misdemeanors also provides exceptions that are of utmost importance for environmental misdemeanors punishment; exceptions that allow harder punishment[642].

Third question is: On which base can be determined misdemeanors generally, this means environmental misdemeanors also? Formally, on the distinct norms base that define them precisely. This is so cold formal side of misdemeanors defining process. But, only formal side is not enough. Practically all the modern legislatures (Serbian also) define environmental misdemeanors starting from some formally and precisely defined material-legal base, which means: Norms that establish:

Environmental rights,

1. Environmental values,
2. Environmental obligations, even
3. Duties, and

[641] See: Article 3 of the mentioned Act on Misdemeanors.
[642] See Article 35, Paragraph 4, point 1, formulated by the so cold Zakon o prekršajima (Act on misdemeanors) of the Republic of Serbia, from theYear 2013.

4. Environmental responsibilities.

From this point of view it is clear that environmental misdemeanors are formally defined (enacted) delicts based on strong material-legal, often material-legal and sub-legal[643], base. Base that establishes obligatory elements of legal relations of importance for environmental misdemeanors, their logical beings. This means that in concrete case:

- We have no environmental misdemeanor if subject (physical or artificial person) respect norms of some law and with it connected sub-law(s), and that
- We have misdemeanor if specific (concrete) law enact some doing as misdemeanor. Of course if all the elements of its logical being had been expressed in the actual case.

Having in mind that norms which treat environmental problems, including problems of misdemeanors, are not located in small but really big number of legal texts, number in constant process of multiplication, it is clear why we wont to extricate all known and previously in the text mentioned elements and to form special discipline: Environmental Misdemeanors; this from the simple reason that legislature(s) will formulate more and more legal acts of environmental importance and, as their constitutive elements, misdemeanor parts of texts.

In any serious movement thorough the mass of environmentally oriented misdemeanors, it is easy to observe and establish some mutual logic and system. From this reason our next step is attempt to present it to you, starting from their law logical and formal basis.

[643] Sub legal as supplementary elements.

15.3. Struggle against Environmental Delicts and the Role of Connections between Constitutional Law Elements and Environmental Law

15.3.1. In what Ways is Accessed Human Right to a healthy Environment within the States?

In order to truly protect right of present and future generations to a healthy environment, any legislation, not just the *International Environmental Law*, has to define: a.) rights, b.) obligations, c.) duties, and d.) responsibilities under the jurisdiction of its' state. Precisely, to regulate not only rights, obligations and responsibilities of physical but also of artificial persons. Also rights, obligations and responsibilities of the elements of state apparatus, at any level of administration, as well their precisely regulated duties that results from their functions. This also means functions connected with the matter that we treat in this study.

Any state clearly establishes rights of subjects under its jurisdiction by fundamental (basic) law of the country, which means the constitution, forming general and really vide legal base for complex legislature. This is also valid for the establishing and regulating the human right on adequate environment. But declarative establishing of this right, even when done by the constitution, is not enough. It is necessary to be further developed, which means improved by the necessary constitutional details, and guarantied, of course not only at the level of constitutions but also at the level of legal as well as sub-legal acts. Or to say at wider way: "Everyone (which also means "state", Vladan Joldzic annotation) shall care for the quality of the environment and shall be held responsible for causing its degradation. The principles of such responsibility shall be specified by

statute[644]". Modern constitutions from this reason establish rules by which guarantee realizations of fundamental rights:

- From this reason Constitution of the Republic of Serbia (by the Article 1) explicitly proclaims that the State is based on the rule of law[645], clearly, under the sovereignty that originated from citizens (Art. 2.)[646], as well that the rule of law is the basic premise of the Constitution (Art. 3, paragraph 1) which enables constitutional guarantee of human rights and compliance with the Constitution, as well to the laws as means of its achieving (Art. 3, paragraph 3), while
- Constitution of Swiss Republic forms the "Article 35 - Upholding of fundamental rights", decidedly proclaiming that constitutional right, which also means on the healthy environment, have to be realized "throughout the legal system (Article 35, paragraph 1)[647]", as well that whoever performs governmental functions is in clear obligation toward the basic constitutional rights and their implementation (Art. 35, paragraph 2) and is also obliged to ensure

[644] The Constitution of the Republic of Poland, 2 April, 1997, Article 86.
[645] Which is also, almost literally, regulated in:
Constitution of the Republic Portugal, Article 9, paragraph 1, under (b), moreover with clearly defined obligation for Portugal state to constantly work on the protection of environment as well as on the conservation of natural resources, and
Constitution of the Republic of Romania, Article 1, paragraph 3.
[646] Compare with the Constitution of the Republic Portugal, Article 2.
[647] What logic means that laws:
1) Criminalize and sanction,
2) Establish a judiciary system,
3) Establish the prosecution,
4) Establish police authorities,
5) Establish bodies of inspectorates,
6) Regulates the rules of procedures,
7.) Establish bodies responsible for the execution of sanctions, and
8) Govern the rules and conditions of their work.
Indeed it is easy to find this system of law, its' numbered elements, in any modern state, not only the Republic of Switzerland.

that fundamental rights become effective for private individuals, at such a way providing that one of fundamental rights are inviolable (Art. 36, par. 4). Moreover, the Swiss legislator is decisive when (by the Article 61 - Civil protection, of Constitution, par. 2) prescribe (by the Art. 61, par. 3) obligation for State to put in force laws aimed for the protection of natural and un-natural disasters, also defining the obligation that such doing is duty, stressing that if some of subjects' doing is not based on law in force such doing is against the Constitution. This is not only in Switzerland but in any modern state considered as the highest form of criminal act – unconstitutional crime.

- Constitution of Albania[648] (by the Art. 41) precisely established criminal liability, without any exception, even for the members of Parliament, for any constitutional violation, which automatically and also means for the violation of norm(s) that establish human right on the healthy environment (see Art. 39, point 9), while also establishes duty and responsibility for any minister, which also means of the Ministry for the environment (Art. 39, par. 2).
- Constitution of Finland (Year 1999) is even clearer, when, by the Article 14, proclaims that guarantors of rights (which means of all rights, including on the healthy environment), are:
  - Legislative,
  - Executive, and
  - Judicial power, but also
  - Local authorities.

This also implies that they are the guarantors for responsibilities based at legally established and regulated rights. Furthermore, Constitution of

[648] Constitution of the Republic of Albania, from the Year 1998.

Finland prescribes (by the Article 20, paragraph 1) that all subjects are responsible for nature, biodiversity and the environment. This precisely means: Responsible are all forms and levels of government, from the one side, and artificial and natural persons under the sovereignty of Finland, on the other. At the same time Constitution of Finland emphasizes that public authorities are the guarantors of a healthy environment, which means Guarantor of human right on a healthy environment as the right of present and future generations (Art. 20, par. 2) and that everyone has the right to influence at the decisions of the impact on its healthy environment (see also Art. 20, par. 2).

But, apart from declarative establishing of the environmentally oriented rights and environmental protection, question is: What constitutions more specifically proclaim and practically formulate through their chapters and norms? May be the best answer can be seen from the actual Switzerland Constitution, Section 4: Environment and Spatial Planning, especially Articles: 73 - 86, by which precisely regulate questions of importance for: Land and soil[649], mining[650], dangerous materials[651], all kinds of traffic[652], building[653] and the protection of cultural values[654].

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[649] See also: The Constitution of Greece, Article 24, par. 4,
Italian Constitution, Article 117, paragraph 3,
The Constitution of the Republic of Lithuania, Article 54, paragraph 1,
The Constitution of the Republic of Portugal, Article 66, paragraph 2 (b), or
The Constitution of the Russian Federation, Article 72, paragraph 1, under (j).

[650] See, for example Article 10, paragraph 10 of the Constitution of the Republic of Austria.

[651] See also: The Constitution of the Republic of Austria, Article 10, paragraph 6, andUgolovnoi kodeks Rosiiskoi Federacii (Constitution of the Russian Federation), from 24. 05. 1996., Article 72, paragraph 1, under (i).

[652] Also, for example, see:
Constitution of the Republic of Austria, Article 10., paragraph 9, and
Constitution of Croatia, Article 132, paragraph 2,
Constitution of Kingdom of Sweden, Article 7, paragraph 5.

[653] See also:

As can easily be seen from the presented examples, constitutions also formulate and bring into power sets of norms by which decidedly define number of objects and with them related relations of the so-called ecological and legal relevance[655]. Of course for their realization is necessary to form adequate state apparatus, directed on:

- At first place, constant implementing of environmentally aimed legal and sub-legal acts and their norms that treat many areas, but also
- The applying of the environmentally aimed *Penal Law guaranties*.

It is understandable that any State which formed a series of legal and sub legal acts and standards, which can be:

1. Of parallel environmental importance, and especially
2. In their entirety observed as the elements of specific mosaic primarily, or even
3. Exclusively oriented at the ecological questions and problems connected with them,

Needs all such norms adequately systematized. Or to say at the other way: Any state posseses practical need for the adequately formed *Systematic of the Ecology Law and, especially, legislature*. *Systematic* we

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Constitution of the Republic of Austria, Article 10, paragraph 13,
Constitución Española (Spanish Constitution), Article 148, paragraph 2.
Constitution of Kingdom of Sweden, Article 7, paragraph 3.

[654] Also see: The Constitution of the Republic of Austria, Article 117, paragraph 2, under (c) and par. 3,
Constitute Portogallo (The Constitution of the Republic of Portugal), Article 9, under (e) and Article 52,
The Constitution of the Slovak Republic, Article 44., paragraphs 2 and 3, and
Ustavo Republike Slovenije (Constitution of Republic Slovenija), Article 73.

[655] Concept and logic of the Ecology Law relations see closer at: Joldzic, V. (2008), pp 46-48.

had briefly expressed, at previous pages, through a kind of comparative analysis of the European and other legislatures.

Of course, states have not only the need and obligation to form environmentally oriented elements of legislatures but also to formally establish and organize appropriate apparatus for their realizing. What have been done in reality we can see through the laconically analysis of Environmental and Constitutional Law relationship. Of course, not only through the example of the Republic of Serbia but also and parallel on the legislatures of other modern states.

15.3.2. Constitutional Fundaments for the Struggle against Ecological Delicts, Especially Crimes, Observed Parallel through Transitional Way of Serbia and the other States

15.3.2a. Ways of Development

Speaking about the relationship between *Constitutional* and *Ecology (Environmental) Law*, at the terrain of the Republic of Serbia State, as our primary example, should be always kept in mind the constitutional primacy over other branches of legislatures, given that the constitutional right of Serbia, by its very logic, contains the principles and norms binding on all branches of legislatures. Hence, it is in Serbia, as well as in all modern laws, especially of the European states, parallel to maturation of ecological questions and problems, in recent years, obvious process of constant occurrence and development of constitutional norms directly targeting the inauguration of obligations to adequately and at formal legal way to regulate ecological relations. This process is law-logically and practically the same in many states, as can be seen and explained at the example of the European states legislatures. Legislatures that had been and are adequate models for the Republic of Serbia legislature developing. This also had been obvious at the example of the Federal

Republic of Yugoslavia Constitution (now historical-legal text[656]). This has to be explained.

In the early nineties, identifying trends in environmentally oriented reconstructions of constitutions, the authors of the Federal Republic of Yugoslavia Constitution clearly pointed out that the Federal Republic of Yugoslavia is "sovereign state based on the equality of citizens[657]", which fully respect and enact principle that "rights and freedoms of man and citizen can be achieved… and duties fulfilled on the basis of the Constitution (FRY Constitution, Art. 67.)", at the same time proclaiming the "right of man to a healthy environment (Constitution, Art. 52, paragraph 1)", also duty of State to take care of a healthy environment (Art. 52, par. 3). Next constitutional document, from Serbia and Monte Negro: Constitutional Charter[658], on the field of the ecological questions was far more concise. Not one word from this act did directly mention the environment. But this does not means that mentioned constitutional document had not provided environmental protection. This ensue from the Article 16 of the Constitutional Charter, which precisely defined that ratified international legislative texts are the parts of positive domestic legislation (legislation in force), which also and automatically include all such ratified acts that are of eco-legislative importance[659]. We also should not forget Articles 8 and 9 of this Constitutional Charter, which clearly put into effect all the elements of The Universal Declaration of Human Rights (UDHR)[660]. For us it is not of practicale importance only The Universal Declaration of Human Rights but all such posterior documents

[656] Constitution of the FR Yugoslavia, Year 1992.
[657] Constitution of the FR Yugoslavia, Article 1.
[658] Ustavna povelja državne zajednice Srbija i Crna Gora (Constitutional Charter of Serbia and Monte Negro), Year 2003.
[659] Constitutional Charter of Serbia and Monte Negro and Accompanying Documents, p. 16, Art. 16.
[660] The Universal Declaration of Human Rights (UDHR), 10 December 1948.

of global or European importance. For example: European Convention[661]. Of course, we, as the scientist, also have in mind importance not only of mentioned documents but of all consequential International Law documents that treat, not only human rights generally, but also directly and precisely problems and questions of the environmental protection and the human right to a healthy environment[662].

State where we belong, this means the Republic of Serbia, in the construction of its' Constitution[663], used the experience of two previous shortly analyzed texts. Hence, the basic law of our State provides environmental protection at much stronger way than it can be concluded on the basis of a cursory review of the Constitution. We will try to explain this a bit wider, using the analytical method. But let us to get explanations at some logical order.

15.3.2b. Ecologically oriented View, at the Example of the Republic of Serbia Constitution, on Requests: Which Elements have to be Established and Legally Précised, Especially for the State Apparatus Functioning?

Using elected example of the authors' State, we point at the facts that the Republic of Serbia, as any modern state, is a sovereign state based on the equality of citizens[664], with full respect for human rights and freedoms, with the rights and freedoms of man and citizen basically limited primarily and only by equal freedoms and rights of others[665], and

[661] Convention for the Protection of Human Rights and Fundamental Freedoms, from the Year 1950.
[662] See, for example: International Policy on Human Rights, Approved at the IFSW General Meeting, Hong Kong, July 21 - 23, 1996.
[663] Constitution of the Republic of Serbia, from the year 2006.
[664] See Article 21 of the Constitution of the Republic of Serbia.
[665] Starting from the Article 21 in connection with the Article 194, paragraph 4 of Constitution, which legal combination establishes principle that in the Republic of Serbia is in force Universal Declaration of Human Rights, from the Year 1948.

that freedoms and rights of men and citizens, as well as their duties, have to be treated and exercised on the refinements from the basic law of state, respecting the principle that everyone is entitled to equal protection of their rights and that all are equal before the law[666]. We are, pointing at the Constitution, also starting from at the *International Law* proclaimed rights of man to a healthy environment[667], hence the duty of state to take care of a healthy environment[668], as well as at the adopting of principle that the State meets the obligations arising from international agreements to which it is a Party, and that international treaties that had been ratified and officially published, in accordance with the basic law of the country and generally accepted rules of *International Public Law*, are an integral part of the internal legal order of state[669]. This also means that State is obliged to take care in the field of protection of fundamental human rights and freedoms, from this reason also to regulate responsibilities and sanctions for violations of freedoms, rights and duties of man and citizen.

Treating at the equal way right of man and citizen on the healthy environment State has to devote profound attention at the:

- Human life and health protection,
- Protection of flora and fauna,

[666] Starting from the Article 21 of the Constitution and the Article 1 of the Universal Declaration of Human Rights.
[667] See Universal Declaration of Human Rights, Article 46, line 2.
[668] Constitution of the Republic of Serbia, Article 74, paragraph 2.
[669] According to the globally and clearly established principle that the elements of the International law:
- That had been ratified are the elements of national legislations in force, as well as principle that such also are
- The elements that have not been ratified although have been globally accepted, which means that such elements of the International Law also are the elements of national legislations in force.
Precise example for previously mentioned is Article 194, paragraph 4 of the Constitution of the Republic of Serbia.

- Protection against toxic, flammable, explosive, radioactive and other hazardous substances,

as well as other issues of importance for the protection of rights of citizens to a healthy environment[670]. Particularly bearing in mind that these are clearly matters regulated by international treaties, ratified by the *predecessor* State or the Republic of Serbia itself. This often means that Republic of Serbia, as well as any modern state, has obligation to further develop such internationally established legal threatening with adequate national laws (by so cold *lex specialis*) and necessary sub-laws.

Respecting constitutional principles and the obligations from the *International Law*, inherited by the ratifications of acts that treat the matter of environment, it is necessary:

1. The existing set of legal and sub-texts regularly and promptly supplement with new legal constructs, and
2. In accordance with established human rights, which also means the right to a healthy environment, as well as from this right implied indisputable obligations, regularly amend certain legal texts of importance for high-quality environmental protection, including Penal Law and especially Criminal Law acts.

The only correct way to do this is by continuous work, primarily on the environmental legislation, in accordance with the actual set of ratified conventions, at first place from the field of the *International Environmental Law*, as well as from accompanying annexes, in any state fully respecting norms of the law formed for the environmental protection, for example norms of such law of the Republic of Serbia[671],

[670] Ibid, Article 97, paragraphs 8 and 9.
[671] Zakon o zaštiti životne sredine (Law on the Protection of the Environment), from the Year 2004.

thus fulfilling previously explained precise constitutional guidelines and legal requirements[672].

Starting from the logic of acceptance and incorporation into domestic legislation clearly expressed legislative elements of *Public International Law*, and taking into account with them logically associated articles such is the Article 16 and Article 194, paragraph 4 of the Constitution of the Republic of Serbia, it is clear that each one *Public International Law* document of legislative type, which had been ratified, is part of the legislation in force, as well that all generally accepted principles of *Public International Law* also are integral part of domestic legislation. Furthermore Constitution of the Republic of Serbia, which we deeply analize:

- Clearly says that everyone have right on healthy environment (Article 74, paragraph 1),
- Inaugurates obligation for all subjects to protect the environment (Article 74, paragraph 3),
- Establishes responsibility of all subjects for the environment (Article 74, paragraph 2).

Article 97 of the Constitution, with many of its' elements, contributes to the protection of ecological values, as well as the formation and functioning for this aim necessary system, precisely:

- Clearly stipulates, under paragraph 9, that the Republic, through its organs, regulate and ensure: sustainable development, the system of

[672] As examples for such fulfilling of the requirements can be observed: Zakon o zaštiti prirode (Law on the Protection of Nature), Year 2009, Zakon o zaštiti od nejonizjućeg zračenja (Law on the Protection from Non-Ionizing Radiation), from the Year 2009, Zakon o ambalaži i ambalažnom otpadu (Law on the Packaging and Packaging Waste), also from the Year 2009, and Zakon o zaštiti od buke u životnoj sredini (Law on the Protection of Noise into Environment), from the same year.

protection and improvement of the environment; as well as the protection and improvement of flora and fauna,

- Prescribes the obligation for the Republic of Serbia, by the paragraph 12 of Article 97, to establish:
  - the organization, and
  - use of space,

which is also necessary for adequate treatment and protection of the environment,

- By paragraph 15 of the Article 97 establishes the obligation for the Republic to finance state apparatus elements and its duties, which also means the parts of such apparatus in charge for the environmental protection,
- Provide for State, by the paragraph 16 of the Article 97, the obligation to form: organization, jurisdiction and actual doing of all the state agencies, between them all those whose principal objective is protection of the environmental elements and the environment as a whole, obliging the State to form hierarchy and mutual connection between such agencies.

Article 99 also contributes to the protection of environment, precisely with:

- Paragraph 4, by which precisely established rule that the Republic of Serbia apply only those international treaties that had been confirmed by the Parliament (ratified), which also includes environmentally oriented international treaties, as well as
- Paragraph 7 of the Article 99, which clearly stipulates that the basic legal questions have to be treated by legal acts (laws) formed and put in force by the Parliament, which means also all such legal acts of primarily environmental importance,

- Paragraph 10 of the Article 99, which specifies that a spatial plan (as a plan o economic and environmental importance) have to be adopted by the National Assembly of the Republic of Serbia (Parliament), and
- Paragraph 11 of the Article 99, which stipulates the procedure for adopting budget and for the work of state apparatus as well as of other subjects authorized to do some of environmental protection activities for the state.

Article 195, paragraph 1 of the analyzed Constitution explicitly provides and defines that all sub-legal acts have to be formed and formulated in accordance with the laws, which also means accordingly to those legal acts primarily relating to the protection of the environment, as well as to the legal acts that also can be of importance the environment.

The Constitution of the Republic of Serbia, by the Article 190, establishes and defines the rights and responsibilities of local governments. At the same time some of the obligations, such as those from the:

- Paragraph 1, on the performance of public utilities, if duly carried out, certainly contribute to the protection of the environment, while the opposite behavior contributes to the unwanted environmental loads;
- Paragraph 2, which establishes the right and duty for state to regulate planning and using of building areas,
- Paragraph 6, which establishes a clear obligation on local authorities (local governments) to ensure the protection and enhancement of environmental elements, while
- Paragraph 7, providing protection to the agricultural land, ensure protection for one of the basic at the same time strategic resources of the environment.

As we had seen from this short analysis, the Constitution of the Republic of Serbia, with many of the articles and their paragraphs, establishes the rights, obligations and responsibilities of natural and artificial persons, which also means of the administrative system elements, aimed at protecting and preserving of the environment. This means legal access which is much more comprehensive than it can be concluded on the basis of the Article 74, at which many writers of legal texts only point. In the other words, we can conclude that in the process of transition the Republic of Serbia made a noticeable development of the constitutional basis for future development and application of environmentally oriented legislation in relation to the constitutions of previous forms of state: State union of the Republic of Serbia and Monte Negro, previous FR Yugoslavia, and older state SFR Yugoslavia.

15.3.3. Instead of conclusion - Pinning Formal Constitutional Basis for Adequate Criminal-law Protection of the Environment

It is necessary that anything established by constitutions, as values or rights, to be able to come to life. Confirmation of logical beings of norms, which establish and regulate something, is impossible without their later presence in reality, which means: In the life of society. In order to achieve this, it is required one more step: To form basic guaranties, which means:

- The constitution as a basic, but also based on the constitution
- Set of generally oriented laws, as well as
- More specialized laws.

All of this is true also when we talk about the environmental protection and human rights on a healthy environment, and thus, automatically, the obligation of State to construct adequate preventive, of course legislative, elements for the establishment of protection in reality. Hence it is clear

question: What, at the level of legislations, have to be build and operated in accordance with the basic law of country?

The answer is at the same time simple and complex. It is easy to number the key elements at we pay attention, but it is a complex job to explain each of them, especially if we go deeper than the basic cognitive constitutional elements offer us. From this reason, and in this moment of work, we primarily pay attention at the constitutions.

Comparative analysis of the constitutions of modern states, as basic laws that are necessary for functioning of legislatures, showed us that constitutions are in constant processes of reforming, which, over time, allow better laws forming, between them of environmental importance too. Laws that regulate wanted as well as protect from the environmentally unwonted. Thus:

1. Incriminate and sanction what is environmentally undesirable,
2. Establish adequate judiciary apparatus,
3. Establish prosecutions, which means the institutes in charge to represent the general interest in combating crimes as the most serious form of offenses, between them offences which affect environmental rights and values,
4. Establish police forces, without which states cannot take necessary actions against everything that previously had been declared as delict, especially crime,
5. Establish inspectorates as specific specialized organs with necessary and deep knowledge,
6. Arrange the rules of procedures at such a way to enable that all be equal before the laws, this simply means that states have obligation to regulate procedures, by laws, at such a way that any

of subjects possess equal possibility to defend threatened or violated value, right and interest,

7. Establish organs for the enforcement of sanctions, having in mind that without sanctions, as practically alive guaranties, law and the state transform itself from real to imaginary category, and

8. Regulating the terms and conditions for work of previously mentioned organs toward all persons (natural or artificial) by adequate law and sub-law acts.

Indeed, it is easy to find such system of laws, its elements, in any modern state, not only in the Republic of Serbia or, for example, the Republic of Switzerland. But to adequately explain matter of environmental, at the same time penal protection, it is necessary not one short text, alike our, but workmanship at the series of systematical studies.

One of logical questions is: Do constitutions clearly treat the obligation of the states to establish *Penal Law*, especially *Criminal Law protection*? Yes! Basic law, and on them established legislatures, respect principle that ignorance of the law does not absolve anyone of penal, including criminal, responsibility, as such principle can be clearly seen, for example, from the Lithuanian Constitution (Article 7, paragraph 3). Quite contrary, everyone is responsible for the quality of the environment and the elements of liability determined by laws. This decidedly means from *Criminal Law* norms also[673]. Furthermore, all states respect the principle that no one can be found guilty before the end of trial and adequate judgment[674]. It is clearly stated within many constitutions and their first

[673] See, for example: Constitution of the Republic of Austria: Articles 10 paragraph 6 and Article 15, paragraph 9.
[674] As is clearly stated, for example, in the:
Article 57, paragraph 2 of the Hungarian Constitution,
Article 34, paragraph 2 of the Constitution of the Republic of Serbia.

articles. For example in the text of the Republic of Austria Constitution, it's Article 10, paragraph 6, which norm clearly established the obligation of the State to form:

1. The criminal legislation[675],
2. Prosecution[676],
3. Justice,
4. Administration necessary for justice, and
5. All other institutions necessary for the protection of crime.

States, by their constitutions, clearly stipulate the principle that the criminal proceedings must be taken uniformly, that is, according to the particular formed legal acts in force (positive laws), which, of course, must be in accordance with the actual constitutions. A clear example for this is the Article 34 of the Constitution of Finland, which literally lays down the obligation for State to establish the rules of *Criminal Procedure Law*[677].

States, by their constitutions, also establish the possibility of placing submissions, including accusations and so cold *actio popularis.* Precisely: In order to protect the public interests, including the interests of

[675] Which request also can be seen from the:
Italian Constitution (Costituzione della Repubblica italiana), Article 117, under (i),
Constitution of Russian Federation, Article 71, under (n) that request of State to regulate by laws questions: criminal law, criminal proceeding and prosecution of sanctions,
Constitution of Spain (La constitución española), Article 45, paragraph 2, that clearly establishes penal liability for attacks at the environmental law norms,
as well as from many other constitutions.
[676] See closer: The Constitution of Russian Federation, Article 71, under (n).
[677] Just the same can be seen, for example, from the:
Article 34 of the Estonian Constitution, as well as from
Article 97, paragraph 1, point 2 of the Constitution of Republic of Serbia.

importance for the environment, the quality of living conditions, and cultural treasures, as well as man-made environmental values[678].

Constitutions also establish possibilities of placing submissions, between them accusations, with the aim to protect rights, environmental rights also[679].

Observing the example of Serbia it is obvious that positive Constitution, namely on the elements of the Article 97, paragraph 1, form bases for the:

- Forming and realizing the protection pointed at the rights of man and citizen,
- Legal realizing of the court proceedings, which also mean that state form and put in force laws necessary for courts doings,
- Legislative elements needed for the adequate regulation of proceedings before state authorities, namely: the administration,
- Form and put into effect laws that criminalize and penalize all those behaviors that endanger and / or violate the rights of man and citizen, which means also the right to a healthy life in a healthy environment,
- Legaly establishing:
    - the system, which means the control of crossing the border, and
    - the control of trade in goods.

From mentioned reasons Republic of Serbia formulated Chapter 24 of the Criminal Code (January 2006, although work on the formation of the

[678] For example see Portugal Constitution, Article 52, paragraph 3.
[679] Ibid, paragraph 1.

same draft had been done much earlier[680]). This made a crucial breakthrough in the formation of both basic means of prevention of environmental crime, as well as *a posteriori* protection of human rights to a healthy environment.

If, over time, we become aware of all the results shown above in the text, we must automatically draw the conclusion that in front of us, especially in the areas of the *Environmental Law* and the legislations, not only of the Republic of Serbia, is expressed multilayer and permanent necessity identified as a need:

- Of working on staffs who will be more practically engaged, precisely on issues that have ecological or the environmental dimension,
- Of permanent ecology-legal education, in accordance with the European Union law, established at the same time at the results of continental, Roman and Anglo-Saxon law schools, as well as
- Of ex socialist states law school[681], and
- For clearly modeled scientific researching, allocated for this purpose, in order to achieve better and prompt results, of course applicable in practice but also at the level of high schools, what we are constantly trying!

All those results have to be expressed through clear, concise and tightly-themed issues, elements that are incorporated in the *Ecological Law* and legislatures, including into elements of *Penal Law* oriented at the protection of ecologically unwonted.

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[680] The author of this chapter of the Draft of Criminal Code, later the chapter of Criminal Code of the Republic of Serbia, is the author of this book. See: Joldzic, V. (1997), Chapter V, pp 377-399.

[681] Which can be seen through actual legislatures of: Czech, Poland, Slovenia and Hungary.

15.4. Environmental Misdemeanors

15.4.1. Logic How to Establish Systematic of Environmental Norms as well as Norms of Environmental Misdemeanors

As we explained in our earlier studies and books that established and treat General Part of Environmental Law[682], so cold Separate Part of Environmental Law, starting from knowledge of the General Part of Environmental Law, is in logical obligation to orient its' energy on the cognition and understanding the growing mass of the environmental legal relationships, to define them more precisely and, of course, to systematize them. Only on such way it is possible, at the same time, to bring up quality of the Environmental Law as science discipline and environmental legislature, including the quality of parts that form complex mosaic of the environmental misdemeanor rules.

Having idea to form *Systematic of the Environmental Misdemeanor Law*, we, at first place, have to aim our attention at its general predecessor: *Systematic of the so cold Separate Part of the Environmental Law*. Of course, based on actual legislature of the observed state[683]. Having this in mind it is obvious that we have to answer at a number of precise questions:

- By which norms,
- By what kind of structure,
- At what hierarchal levels, and
- By which a way,

[682] See: Joldzic, V. (1988, 1996a and 1999).
[683] This means Republic of Serbia, but in our earlier texts we had focused on many other states as examples, more than twenty of them.

Have been regulated wanted relations toward group objects, taking into consideration that all the mentioned norms are constitutive elements of the actual environmental legislature(s). Thereof, practically at the same time, automatically of the *Environmental Misdemeanors Law* and legislature(s).

At the level of every state, formulating answers on previous questions, we have obligation to start from general theoretical way how to classify norms, starting from:

1. Kind,
2. Perimeters of importance,
3. Time of effect, if it has been defined, and
4. Competence to bring such a law.

We also point at the fact that environmental norms, as formal and material-legal base for environmental misdemeanors norms formulating, can be, in this theoretical but at the same time practical and concretized approach, observed, thus systematized, starting from general toward particular, as:

1. General rules, placed in legal acts of so cold *lex generalis* category,
2. Entities of separated rules, legislative texts located in so cold *lex specialis*, and
3. Entities of singular rules, named (at *Latin*) as *lex singulum*[684].

Our opinion is that such integral approach is the only one law-logically and methodologically correct, thus usable, for adequate constructing of the systematic and integral *Separate Part of Ecology (Environmental)*

[684] Nearly every state possess such laws that treat one singular problem, not two or more identical.

Law, consequently the *Environmental Misdemeanors Law* and, parallel, misdemeanors legislature, of course of the Republic of Serbia also.

Starting from placed Environmental law logic apprehending, as we presented in our earlier texts, before all books[685], that:

- starts from the law principle of general perceiving matters of importance, which means of the environmental also, and
- we developed through our effort to systematize observed groups of legal and, at the same time, environmental relations or relations of environmental importance[686], relations that possess some needed and enough mutual elements as prerequisite to observe all them as distinct groups, and in the framework of those group objects of orientation to single-handed objects as objects with clearly expressed law-logical beings,

We form Systematic of Separate Part of the Ecology (Environmental) Law, and, practically identical, Systematic of the Environmental Misdemeanors.

Into *Systematic of the Separate Part of Environmental Law* logically belong distinct entities that we named as:

1. General rules and other texts that form basement for protection of the environment generally, as well as rules that treat the elements of the environments that have to be specially protected at general way[687],
2. Rules that treat nature generally and especially protected natural values,

[685] At first from the Year 1996: Ekološko pravo – Opšti deo (Ecology Law - General Part), written for the ELSA and University of Belgrade.
[686] See more at: Joldzic, V. (2002), especially Part II, pp 122-130 and Part IV, pp 146-180.
[687] See more at: Joldzic, V. (2011), pp 101-259.

3. Waters,
4. Air,
5. Land,
6. Forests,
7. Herbal and animal world,
8. Hunting and fishing,
9. Mining,
10. Ionizing radiation,
11. Nuclear safety,
12. Loudness,
13. Dangerous materials,
14. Poisons,
15. Accidental situations,
16. Traffic,
17. Construction, specially:
    - Construction of objects, and
    - Ambience arranging,
18. Wastes,
19. Cultural properties, and
20. Legal norms which are hard to classify, but can be named: The other group objects, but which can be also internally classified.

Every one of mentioned group objects, as the objects of importance and base for the:

- Ecology (Environmental) Law mosaic forming, and also for

- Ecology (Environmental) Misdemeanors defining,

We observe with law-logical order, starting from general toward norms of lower hierarchical level of importance.

At the same level of hierarchical importance our attention is aimed at first place at some group object as entity and after that at a singular object(s) from this observed group object. This also, and automatically, means that we have to analyze, at first place, some *lex generly*, after it *lex specialis* that treats this matter to, and, if such legal text exist, legal construction that can be observed as the legal act that belongs to the *lex singulum* category.

Having in mind that environmental legal texts are mainly of complex (L. *blanket*) nature, with logical beings formed not by one but by the elements from two or more norms, in reality we have duty to analyze them, observing at first place legislative texts, but also the elements off sub-laws if they are mentioned in observed articles of environmental laws and laws of importance for the environment also.

15.4.2. Misdemeanors Generally Oriented at the Protection of the Environment and their Material-Legal Fundaments

Basically formed frameworks, at the same time formal and material bases for the *Environmental Misdemeanor Law* norms, special input in matter, for decades allow us to form modern laws directly oriented at the protection of nature and the environment (as a whole), integrally observed[688]. Excellent examples are such lows of: Sweden[689], Norway[690], Germany[691], Great

[688] See: Joldzic, V. (2007b), p 41.
[689] Kingdom of Sweden, Environment Protection Act (1969, 1981, 1987, 1989).
[690] Nature Conservation Act 1970: Act No 63 of 19th June 1970 relating to nature conservation (The nature conservation act), as subsequently amended, most recently by Act No 59 of 25 August 1995.

Britain[692]… At the Republic of Serbia field this had been represented more than 40 years ago with the Law on Nature Protection[693] after it with the Law on the Environment[694], as well as with the actual (in force) Law on the Protection of Environment[695]. Precise elements of the actual Law on the Protection of Environment give us framework and bases for environmental misdemeanors forming. At first place from the reason that this law: 1 make environmental protection fundaments, 2. regulates adequate relations to them, and 3. form obligations for us to formulate and put in force many specialized laws oriented at the: air, waters, soil, forestry, ionizing radiation, wastes *et cetera.*

15.4.3. Apparatus and Conditions Necessary for the Misdemeanors Treatment – Questions of Practical Approach

Deeper penetrating into the matter of researching, we can understand that *Ecology (Environmental) Law*, thus environmental legislatures also, form material-legal bases for *Environmental Misdemeanors* legislatures, but not all the necessary elements for their understanding and applying. It is necessary to contemplate general elements of the *Misdemeanor Law*. For us this means: General elements at the territory of Serbia. We have duty to elaborate number of questions starting from *Misdemeanor Law* fundaments explicating, hereafter:

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[691] See next German laws of importance for out theme: Bundesnaturschutzgesetz (Law on the Protection of Nature and Care for Land), Year 1976,
Gesetsz uber die Umwelthaftung (Law on the Responsibility for Environmental Contravention), Year 1990, and newest:
Bundesnaturschutzgesetzes (Law on the Protection of Nature and Care for Land), Year 2009.

[692] Environmental Protection Act, Great Britain, Year 1990.

[693] Zakon o zaštiti prirode (Law on the Nature Protection), Year 1975, now historical legal text.

[694] Zakon o zaštiti životne sredine (Law on the Protection of Environment), formed back in 1991, from the year 2009 historical legal text.

[695] Zakon o zaštiti životne sredine (Law on the Protection of Environment), from the Year 2004, now in effect.

- Explicating connectivity and borders between *Penal Law* disciplines,
- Explaining who can be (active or passive) actor of the environmental delicts, thus environmental misdemeanors also,
- Explication of the misdemeanors' concept, as well as the elements, between them:

    1. Doings,
    2. Consequents,
    3. Causation,
    4. Place,
    5. Time, and
    6. Contour, or to say: Form of misdemeanor. Precisely:
        - 6.1. attempt of misdemeanor,
        - 6.2. cumulation, more precisely:
            - 6.2.1. pseudo ideal cumulation,
            - 6.2.2. pseudo real cumultion,

To the questions of:

7. Responsibility,
8. Culpability, and
9. Base for responsibilities exclusion.

Of course in such a battery of questions we also have to observe sanctions.

Work is not finished when we formulate answers at the all previous questions. We also have to confirm answers at the questions:

1. Who,

2. Where, and
3. When

Starts *Misdemeanors Procedure* for environmental problems?

Answers put us mainly toward inspectorates, of course towards offices of prosecutors and courts too, although not in every case. This depends from battery of factors. For example for what is respective inspectorate competent. Majority of inspectorates have duty and mandate to raise so cold mandate (pecuniary) penalty. We explained in detail such questions (at the Year 2010) in the book that treats problems of state organs and environmental protection obligations and duties[696]. From this reason author, in actual moment, aims attention only at the elements of importance for practical admittance to the *Environmental Misdemeanors.*

Having in mind that a number of laws have been formed with clearly expressed environmental aims, duties and forms, it is clear that for their applying of utmost importance are inspectorates that had been formed for the protection of environment. In this momentum in the Republic of Serbia we can separate:

1. Republic inspectorate for the protection of environment (part of Ministry competent for the environment),
2. Agricultural inspectorate,
3. Water inspectorate,
4. Phytosanitary inspectorate,
5. Veterinary inspectorate,
6. Forestry inspectorate,
7. Hunting, and

[696] See: Joldzic, V. (2010).

8. Fishing inspectorates,
9. Building inspectorate,
10. Communal inspectorate,
11. Town planning inspectorate,
12. Road-ways inspectorate,
13. Railway inspectorate,
14. Inner navigation inspectorate,
15. Sanitary inspectorate,
16. Pharmaceutical inspectorate,
17. Workmanship inspectorate,
18. Market inspectorate,
19. Traffic police,
20. Fire inspectorate,
21. Electro-energy inspectorate,
22. Inspectorate for utensils under pressure, and
23. Mining inspectorate.

All mentioned inspectorates, which exist not only in Serbia but practically in every state, although not always under the identical names, had been formed and their authorizations, obligations, duties and responsibilities précised through numerous legal acts in force. No matter what we shall do at the field of future construction and reconstruction of administrations, all the mentioned inspectorates will be present, with the same obligations, duties and responsibilities, having many of such obligations and duties not only as our inherent legal product but also as the answer at demands from the ratified convention.

15.5. Instead of Recapitulation - Some Observed Penal Law Contradictions and Inconsistencies Within Republic of Serbia Legislature

Our researching of the grooving mass of environmental laws, as well as laws of parallel importance for the environmental protection, present the fact that basic law principles had been mainly respected at the field of the environmental penal acts forming, their placing, hierarchy, mutual connections, meanings and importance, but not always of misdemeanors forming and their law-logical beings. This problem can be seen through analyze of any modern legislature, although expressed to a different extents. To explain this problem we shall use examples from the Republic of Serbia legislature, as closest to us.

Analyzing environmentally oriented legal acts and their penal norms, we discover and understand some specific moments and contradictoriness. Between them, for example, in: Law on the Protection of Environment, Chapter IX – Penal norms, Law on the Protection of Nature, Chapter XVI – Penal norms, and Law on Waters, Chapter XI – Penal norms,

Some momentums expressed at strange way. Precisely that mentioned legal acts when treat:

1. Criminal acts,
2. Economical offences, and
3. Misdemeanors,

Treat them with complex legal constructions, with many paragraphs and points, of such a nature that practically every such paragraph or point posses *distinct legal being* with mutually distinct and separated formal and material legal bases. From such a reason equips that worked at the drafts of environmental penal norms often, and at a bright way, point that such complex articles in fact define two or more misdemeanors. But in case of

some norms this is not precisely ponted, quite contrary. Good examples for such mistakes expressed through the formulating of the environmental penal norms, in the legislature of the Republic of Serbia, are:

- Chapter XI – Penal norms, of the Law on Waters, its' Part 2. – Economic offences, really consisted of only one article, Article 211,
- the Article 201 of the Law on the Protection of the Environment and
- Article 125 of the Law on the Protection of Nature.

Every one of mentioned articles, from paragraph to paragraph, from point to point, if we analyze them carefully, indeed explains not only the essence of punishable acts that namely define and constitute[697]. If we respect that all those norms have been defined not only with the precisely appointed penal norms but with the norms that at the same time form their material – legal bases, which means with them mutually connected norms of laws and sub-laws at the same time, we have to respect also the fact that such constructions really form not one, by the name of concrete article defined logical being, but two or iven serial of logical beings of penal acts. This logical fact clearly points that such legal construction is in reality complex construction that treats various mutually different:

- Doings, and
- Consequents, even
- Executors

of the concrete punishable act. This clearly means that treats not only one act of distinct logical being but a number of punishable acts with distinct logical beings. This means: Distinct criminal and misdemeanor acts. This,

[697] As the economical offences but a number of misdemeanors too, as we can see with the example of Article 213, in conjunction with the Article 211, of the Republic of Serbia Law on Waters.

although analyzed at the mentioned example, is clearly visible at the level of any modern legislature.

Researching of the environmental laws and their penal, mostly misdemeanor norms, point out the fact that at any state such mass of acts often produced teams with excellent knowledge how to regulate the desirable legal relations, but mainly not with the enough knowledge how to protect environmental values and rights with penal norms. From such a reason teams frequently produce a number of law-logical mistakes, which can be easily understood by the law science methodology applicable on the practice of drafts forming. Which mistakes we isolate through our scientific work, especially researching the examples from the Republic of Serbia legislature?

Using knowledge of the *Formally-Normative Method* we can easily, through analyze, establish a facts of importance for environmental penal norm(s), on their:

- Legal, and
- Sub –legal elements

In observed cases, as well as

- Is it in the one article, or its paragraph or even point, present one or more than one law-logical being, which means one or more, mutually distinct punishable acts?

It is obvious that many authors of the environmental misdemeanors, between them authors of previously numbered articles of mentioned laws, had overlooked this logical principle. We emphasize that, clearly formally, every singular paragraph, point too, as legal construction that is connected with distinct and separated formal legal base, that point on some précised and distinct duty or obligation and infringement of this norm, posses special and segregated logical being, thus have to be observed as special and segregated penal act!

It is interesting that teams of lawyers which had worked on one number of environmental laws, their penal norms, respected this law-logical principle through processes of economical offences forming, but not through processes of environmental misdemeanors formulating.

It is also interesting to annotate, respecting the *Method of Analyze* and *Formally-Normative Method*, that mentioned teams, for basically the same acts which are featured by:

1. The same doing(s),
2. The same objet of doing – so cold grammatical object, as
3. The same object of offence,
4. The fact that act do physical person, and
5. The same consequents,

Starting from status of the physical person, just the same act treats as:

1. Misdemeanor, and
2. Act of economical offence category (which category is present in: Croatian, Serbian, Slovenian legislatures…, but not in many other modern law systems),

Although in both cases act do physical person responsible for act in economical process.

In first case we are talking about the physical person' responsibility inside the artificial person, but not always about the responsibility of artificial person as the subject of economical doing.

In the second case we talk about the physical person with the special status named entrepreneur (contractor), in the Republic of Serbia on the base of the actual Article 83 of the Law on Economic Society[698].

Those are only serious and valid distinctions as distinctions between them as physical persons with different status, persons that do punishable acts, among them environmental misdemeanors. But we have a question for all of us, is such distinction in any state adequate and reasonable?

[698] Republic of Serbia, Yakon o privrednim dru[tvima (Law on Economic Society), from the Year 2011.

CHAPTER 16

CONCLUDING OBSERVATIONS - FINAL NECESSARY STEPS IN THE ESTABLISHING THE ECOLOGY LAW AS THE STRUCTURE ELEMENT OF THE POSITIVE LEGISLATION (AT THE REPUBLIC OF SERBIA EXAMPLE)

Thinking about the general elements of the *Ecology Law*, at this place we shall point our consideration on some, we think, necessary final steps in the *Ecology Law* establishing as the structural element of the positive legislation of modern states, this also means at the level of the Republic of Serbia, State in transition. Especially from the reason, which become obvious, when we analyze a number of rights and proprieties of significance for the *ecos*, that is really necessary to adequately treat all of them. This means: To give them maximally precisely, by formal legal way, with material legal norms, adequate significance and role. Only by finalizing those steps it is possible to establish really systematized legislature - assembly of the legal norms by which *ecos* will be really protected. Significance of such norms is expressed not only by the regulating and the necessity for the regulating of the opened questions of the relations toward solid number of group elements of the ecological

regulative, but also in the point that such norms will complete parts of the ecologically oriented legislatures that treat general questions of the *Ecology Law*. We can form such conclusion easily by comparing, for example, European legislatures with positive Federal legislature of the United States of America, as well as the legislatures of USA federal states.

If we accept:

1. In the book proposed logic of the *Ecology Law* defining, as well as
2. The object of *Ecology Law* scientific researching, and
3. Methods applicable:
   - at our researching, and
   - at ecological problems threatening,

all this inevitable lead us to apply the basic logic by which the entire positive ecologically oriented legislatures of states, no matter we are talking about complex or unitary states, Serbian legislature between them too, is oriented toward life and development. This logic is absolutely clear, oriented on the man at first place, his rights, duties and freedoms. Rights and freedoms expressed in such measure that do not produce trouble or harm to another men[699]. In the last years, by developing the ethical comprehension not to produce trouble or harm only for living but also for the future generations. This is the essence of *Ecology (Environmental) Law* idea. From this reason, pointing out at the necessity of the continual *Ecology Law* systematization, reconstruction and supplementing the ecologically important norms into legislature, we have to start, at first place, from such premise formulated in constitutions (Serbian also). The State which does not possesses such norm, or norms, in constitution, practically is poor for really important part of law and legislature. Modern states know this. Some of them

[699] Stojanovic, Z. (1992), p 5.

have old constitutions, but recently reconstructed. Constitutions reconstructed with the *Ecology Law logic* and elements that are parallel oriented on the right of men on the healthy environment. It is enough to see only few examples such are constitutions of the: Federal Republic of Germany, India, or "younger" Constitution of Switzerland. We strongly point at the fact that "younger" constitutions, not only of Switzerland, from the very beginning of their parliament formulating, have been oriented at the human rights and freedoms, ecology rights too.

As we have mentioned through our text, if constitutional rules and law sciences' principles will be respected, in the aim of future more qualitative protection of the environment, equally destined to every man, in Serbia as our example also, and for more efficient effect toward foreign factors, legislators will be obliged to do two more necessary and parallel steps.

At first place, if we want to have properties that are treated by the positive ecologically oriented legislations as the respected, such law values have to be protected. Protection cannot guarantee only the norms that have exclusive regulating character, prescribing: Who, what and how to do, or not to do. Also is necessary to guarantee that norms which threat ecologically values and relations will be respected, to guarantee this by sanctions for the unwanted imperiling, or injuries, of such ecological values and relations. This also means that is necessary to build, parallel and constantly, *Ecology (Environmental) Penal Law* as the systematized law entirety, at the level of central government in any state, unitary or complex (federal or con-federal). Only by such legal step we shall, in future, avoid many errors done by legislators. For example: Inequality in regulative environmental protection, or penal protection[700]. From this

[700] Examples of such inequality in penal protection are numerous. To name one, New South Wales Environmental Offences and Penalties Act, from the year 1991, which has classical criminal norm: Tier 1: Offences of aggravated pollution, and legislatures of the

point of view we insist that most important *Penal Ecology Law* part: *Criminal Ecology Law* (or to say: *Environmental Criminal Law*) has to be placed in the construction of Criminal Codes, at the way which, in actual moment, a small number of states expressed by their Codes (Serbia also), or, as Japan done, in special Ecological (Environmental) Code[701].

If we want to see two mentioned parts of the triangle in real life as efficient legal constructions, it is really necessary to form mechanism that will obtain this. Apparatus that will make of them parts of reality. This means that is necessary to include in the actual administrative apparatus part (or parts) aimed for such function. For this we need adequate legal norms. We call them: Norms of the *Ecology Administrative Law*. Aim of their creating is legal constructing and functioning of this mentioned administrative apparatus, as the particular one, or the part of some existing forms of the states' administration. For any of the mentioned forms we shall decide, we have, respecting the *Law-Normative* and *Law Hierarchical Method*, to organize apparatus hierarchically, from the supreme level (central government) to the level of local communities. Only with such scheme of the organization and subordination, such ecologically needed administrative apparatus will be efficient. This is the reason why we want to see all three mentioned elements also as the elements of positive legislature at the State level of Serbia, elements that in real life give legal protection and the conditions for developing of the environment. We think that one of fundamental duties of the law science and legislature is to offer help for the ecological area in a whole.

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other constitutive parts of the Australia, which do not have such classical criminal norm, environmentally oriented, with imprisonment as the punishment.

[701] Named as the Act No 142 of Japan, from the Year 1970. See: Heine, G., Prabhu, M and del Frate, Alvarezzi (eds.) (1997), p 257.

Heine, G., Prabhu, M and del Frate, Alvarezzi (eds.) (1997) Environmental Protection at National and International Levels: Potentials and Limits of Criminal Justice. Rome: UNICRI publication No 56.

Accepting what has been until now expressed, we return our thinking on the actual practical question of the *Ecology Law* development at the example of Serbia. We think that is, in the time of numerous and complex ecologically oriented legal constructions, the only logical and real legal solution to make systematization of present mass of the unsystematic legal and sub-legal (so cold sub-law) texts, in which anyone can see two types of mistakes:

1. Mutual gossip, and
2. Uncovering of many aspects of the ecological relation's.

This means: To make a coherent entirety of the ecologically oriented legislation. This task requires continual researching and developing of the *Ecology Law* also as the course at the universities. By such effort will be produced material necessary in such great measure for the process of developing the *Ecology Law*, not only as the branch of law sciences but also as the efficient and systematized branch of legislature(s), systematized in measure and by logic that has been suggested by us at the previous pages. In Serbia, as in any modern state, of course, ecologically oriented legislature based on the Law on the Protection of the Environment, as *lex generali*, and, in future, from this law as the source and fundament, with a number of laws from *lex specialis* category, that will treat some narrower questions, by this efforts contributing to the protection of the *ecos* in a whole. We think that all conditions for such steps are present.

Finalizing the book, thinking about the need for the *Ecology Law* development as the course at the high schools of law, we mean that are really near to us last of the elements for the forming of the *Ecology Law* subject topic. Elements that had been, for example, implemented in the former Yugoslav Federal Law on the Fundaments of the Protection of Environment, as well as in the actual Republic of Serbia Law on the Protection of Environment (from the Year 2004). We, personally, had

worked on mentioned legislative projects, their elements as well as preparing texts for the so cold phase of harmonizing in this process, those principles and elements that have been in detail described in our book. From this reason we think that it will be positive to express one sketch of this law structure. Especially having in mind that the Federal Law on the Fundaments of the Protection of Environment is the first such federal law in Yugoslavia, for a long time in force at the Serbian State territory (Year 1998-2009), as the example of law with its elements that is jet really rear in the states in transition, and, even, in some more modern legislatures.

Mentioned Laws, especially first of them[702], had built, until the Year 1998, nonexistent elements at the area of legal treatment of the *ecos* at the Balkan area, with its structure of eight chapters:

I – Basically Regulations;

II – Principles and Criterion of the Environmental Protection;

III – Measures of the Protections;

IV – Supervision of the Environmental Condition;

V – Financing;

VI – Responsibility for the Pollution of the Environment;

VII – Sanctions; and

VIII – Final norms.

Team, which author of this book leaded, formed this exhibited structure and justified respecting:

1. The *Ecology Law* principles and obligations from the *International Law* that were incorporated in the positive legislature by ratification more than 60 eco conventions to the year 1998, and

[702] Federal Law on the Fundaments of the Protection of Environment, which formal proposal had been made by the author of this book at the year 1998.

2. That idea to form one basic *Ecology Law*, also open area for a number of legal texts of *lex specialis* category, for deeper and more efficient treating of complex ecology matter.

We think that with such complex process of building the *Ecology Law* and legislature, ecology matter in future will get really efficient rules, and, as legislation, norms for the protecting of all the ecological values. By such formal constructions, to make environmental protection in reality, it is quite necessary to do few more steps:

At first, it is necessary to develop ecological consciousness.

Second, developing the *Ecology Law*, we have to transfer it from cabinets of scientists and politicians to amphitheatres of high schools. We have to present the *Ecology Law* to students of: Law, biology, forestry, chemistry, geology... *et cetera*. To present them elements of the *International Ecology (Environmental) Law*, as well as the elements of national environmentally oriented legislature, treating all group objects and with them connected relations that have been mentioned in our book.

Only at this way we shall form and develop, as present and useful, this necessary knowledge, for really quality regulating and living of the ever developing ecology relation.

NOTE ABOUT THE AUTHOR

Professor Dr. Vladan Joldzic (Vladan Joldžić - Serbian alphabet) was born at Ćuprija, Republic of Serbia, at 6 June 1954. Law faculty studied at the University of Belgrade, where he has been engaged from the start of his work at the Institute for Sociological and Criminological Researches, from the year 1979. His research areas are:

1. Constitutional fundaments needed for human right on adequate environment, thus also for qualitative and ecologically oriented legal regulating and protecting of this right,
2. International Law elements of direct and indirect importance for the Ecology (Environmental) Law establishing and inculcating,
3. General research facility of Ecology Law,
4. Objectives of Ecology (Environmental) Law,
5. Methodological apparatus needed for the Ecology Law forming and applying,
6. Consideration of Ecology Law Systematic,
7. Possibilities for legislative protection of the ecological values, relations, rights and obligations,
8. Penal Law, especially sub-specialty of Criminal Law protection of ecological values and legally established ecologically needed and wonted relations.

Having numerous results at the fields of his theoretical and practical work, at the establishing and developing of the constitutive and legislative

elements of the Ecology Law and legislature of former Yugoslavia and the Republic of Serbia, Professor Joldzic had been invited (at the Year 1996) from the ELSA -- European Law Students Association, University of Belgrade and University of Podgorica as the first Environmental Law lecturer in ex-Yugoslavia.

At the beginning of the Year 1996 Professor Joldzic also had been invited from the University of Belgrade, Faculty of Biology, to formulate subject of studies at the new study group: *Ecology and Environmental Protection*. The subject is Environmental Law, nowadays present at fifth year of studies and PhD studies. Dr. Joldzic is professor for named subject.

Professor Joldzic also had been engaged, from the Year 1996, at the University of Belgrade - Faculty of Geography, at the fort year of studies - subject: *Environmental Policy and Law*, as well, as at the second year of postgraduate studies, for the same subject: *Environmental Policy and Law*, for more than fifteen years.

Professor Joldzic also contributed to the creation of ecologically oriented studies at the Faculty of Chemistry at the University of Belgrade, where he has been engaged from the year 1996.

Having results in formulating ecologically oriented studies at faculties of natural sciences Professor Joldzic had been, nearly fifteen years ago, invited to help in the establishing of environmentally oriented studies at the Faculty of Law at the University of Novi Sad. Precisely, Professor Joldzic had special place into project done with the international scientific team organized by the universities from Novi Sad, Umweltszentrum Karlsruhe-a /UwZTUNIK/- Germany and MNEPU – Moscov. This team had prepared program for internationally organized postgraduate studies: Modern Society and the Environment. This had been first such ecologically oriented project, predecessor of such actual projects at a number of other faculties of law in the Republic of Serbia and abroad.

Professor Joldzic has more than three hundred of published texts, between them nearly 30 books, also texts of all the scientific categories as well as drafts aimed for the Constitution and the legislature of the Republic of Serbia. A number of his texts had been published in foreign states, for example in: Poland, Czech Republic, Hungary, but also in the Great Britain, United States of America, Brazil...

Professor Joldzic is more than 25 years internationally present at the lists of experts, for example at the list of experts of the:

1. UN CEDAR – CEED,
2. IUCN – The World Conservation Union and its' Commission on Environmental Law,
3. ICEL - International Council of Environmental Law,
4. ECPD - European Center for Peace and Development, University for Peace established by the United Nations,
5. Central European and Balkan regional list of experts known as the REC – REED List of Experts, and
6. World Bank (for example Prof. Joldzic had done for World Bank Analytic study concerning the tor for: 1. Nitrate directive and 2. Good agricultural practice, as well as the Nitrate Directive implementation plan).

Such results are reason why six Profesor Joldzic studies (books) now are text-books for established subjects of teaching at faculties in the Republic of Serbia and abroad.

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VIII – LEGISLATIONS AND CASES

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