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Summary

This essay contains a comparison of the development of environmental regimes. Three regimes have been chosen for the investigation - the hazardous waste regime, the global biodiversity regime, and the climate change regime. The author focuses on the international work and negotiations on the conventions, which comprise the foundation for the respective regime, i.e. the Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal, the Convention on Biological Diversity, and the Framework Convention on Climate Change.

The purpose of the essay is to study, compare and analyse the growth of the chosen regimes. The author also tries to generalize the results of the comparison. To fulfil this purpose, a combination of descriptive, comparative, and analytical methods is applied. The investigation is based on juridical doctrine and political studies. Discourse from political science becomes necessary, as theories of environmental regimes and international organizations are not much developed in international environmental law.

The investigation underlines that environmental regimes can be understood as a combination of traditional sources of law, soft law, and international organizations, established for environmental purposes. The rise of environmental regimes can be caused by an environmental problem, subsequent scientific and public response to it, and then political action. Environmental regimes are generally elaborated through the model “a convention of a framework work character plus following protocols”, when a convention is strengthened by further binding instruments. Environmental regimes can be viewed in their narrow and broad meanings. In their narrow meaning, regimes are concentrated only around one global treaty. In their broad meaning, regimes can include elements connected with other treaties, which might have a special or local character.

The role of IGOs and soft law in the formation and elaboration of environmental regimes, and consequently of international environmental law should not be underestimated. The investigation shows that IGOs provide important political and juridical leadership in the creation of environmental regimes. However, environmental IGOs do not possess autonomy in decision-making. The unwillingness of member states to compromise can result in a delay, absence of an agreement, and/or a weak framework convention.

There are many possibilities for the future research of the present topic. The notion of environmental regimes is not thoroughly investigated from the juridical point of view. Thus, it is interesting to analyse how, why, and when other environmental regimes are established or elaborated.

Abbreviations

CBD	Convention on Biodiversity
CITES	Convention on International Trade in Endangered Species of Wild Fauna and Flora
EC	European Community
FAO	Food and Agriculture Organization
FCCC	Framework Convention on Climate Change
GEF	Global Environment Facility
IAEA	International Atomic Energy Agency
<i>Ibid.</i>	ibidem (Latin), the same as the reference above
IGOs	intergovernmental organizations
ILM	International Legal Materials
INC	Intergovernmental Negotiating Committee for a Convention on Biological Diversity
INC*	Intergovernmental Negotiation Committee for a Convention on Climate Change
IPCC	Intergovernmental Panel on Climate Change
IUCN	International Union for the Conservation of Nature and Natural Resources
NGOs	non-governmental organizations
OAU	Organization of African Unity
OECD	Organization for Economic Co-operation and Development
res.	a resolution
UK	United Kingdom
UN	United Nations
UNCED	1992 UN Conference on Environment and Development in Rio de Janeiro, Brazil
UNDP	United Nations Development Programme
UNEP	United Nations Environment Programme
UNEP GC	General Council of UNEP
UN GA	General Assembly of UN
US	United States of America
WB	World Bank
WMO	World Meteorological Organization
WTO	World Trade Organization

1 Introduction

1.1 Background

An environmental regime is a term invented by political scientists. It includes a set of principles, norms, rules, decision-making procedures, and institutions, which actors create or accept to regulate in a particular area of international environmental relations.¹ The word regime is not widely used by lawyers. However, there is a clear connection between international environmental law and environmental regimes.

International environmental law does not confine only to traditional sources of international law, such as conventions, treaties, custom, general principles and judicial decisions.² It is shaped by soft law, which has the form of recommendations, guidelines, resolutions, and declarations of principles, often within the context of frameworks or umbrella treaties.³ States are not the only actors of international environmental law. They are complemented by international organizations, which sometimes play a more significant role than states.

What are environmental regimes then? Are they not a combination of traditional sources of law, soft law, and international organizations, established for environmental purposes? I would say they are. What is more, different environmental regimes have different components, but they usually include multilateral conventions, which serve as backbones for the whole structure. The negotiations of these conventions may be the initial step in the elaboration of environmental regimes.

1.2 The Purpose of the Investigation

In this essay, I am going to study the growth of three environmental regimes – the hazardous waste regime, the global biodiversity regime, and the climate change regime. The rise of these regimes was characterized by the elaboration and negotiations of three global conventions, which constituted the reaction of the world on urgent environmental issues. The hazardous waste regime started to grow with the elaboration of the 1989 Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal (further: the Basel Convention). The global biodiversity regime emerged with the elaboration of the 1992 Convention on Biological Diversity (further: the Convention on Biodiversity). The climate change regime was characterised by the elaboration of the 1992 Framework

¹ Bröms, P. (1995), p. 127; Carter, N. (2001), p. 228; Downie, D. (2005), p. 64; Greene, O. (1996), p. 197; Jönsson, C., Elgström, O., Jerneck, M. (1986), pp. 11, 139.

² Guruswamy, L. (2003), p. 29.

³ Birnie, P., Boyle, A. (2002), p. 25; Dixon, M. (2005), p. 47.

Convention on Climate Change (further: the Convention on Climate Change).

The purpose of my essay is *to study, compare and analyse the growth of the hazardous waste regime, the global biodiversity regime, and the climate change regime*. By the growth of these regimes, I understand international work and negotiations on the Basel Convention, the Convention on Biodiversity, and the Convention on Climate Change. I shall also try *to generalize the results of my comparison*.

In accordance with the purpose of the essay, I set a number of practical questions, which I am going to answer in the course of the investigation. These questions are:

- What are the specifics of international environmental law?
- What are environmental regimes?
- What are similarities and differences in the growth of the hazardous waste regime, the global biodiversity regime, and the climate change regime?
- What general conclusions can be made, basing on the results of my comparison?

1.3 Method and Material

To fulfil the purpose of the investigation, I shall use a combination of descriptive, comparative, and analytical methods. At first, I shall provide the reader with theories about the specifics of international environmental law, environmental regimes and the position of intergovernmental organizations. Where it is necessary, I shall add my personal comments, without postponing them till the analysis chapter. Secondly, I shall carry out a case study, investigating the growth of the three regimes. I shall highlight the elaboration and negotiations on the Basel Convention, the Convention on Biodiversity, and the Convention on Climate Change. Thirdly, I shall compare and analyse the specific features of the three regimes' growth. I shall conclude the work with some generalizing reflections over the process of regime formation.

In my investigation, I am going to combine juridical doctrine with the research in political science. I should do so, because theories of environmental regimes and international organizations are not developed in international environmental law. By introducing some elements of political science, I shall create a more precise picture of the unique structure of international environmental law, which is a rapidly expanding area of international law today.

To find the material I need, I am going to use Libris, Lovisa and Google.com search engines. The library of the Raoul Wallenberg's

Institution and the library of the International Institute for Industrial Environmental Economics will be also of much help.

1.4 Structure

The structure of my essay serves the purpose of my investigation.

- In Introduction, I shall present the background for my scientific problem, formulate the purpose of the work, and introduce the method of the investigation.
- Chapter 2 is devoted to the theoretical framework. I shall present theories about the specifics of international environmental law, environmental regimes and the position of intergovernmental organizations.
- Chapter 3 will contain case studies, which will investigate the growth of the hazardous waste regime, the global biodiversity regime, and the climate change regime.
- In Chapter 4, I shall compare and analyse different aspects of the growth of the three regimes.
- In Final Conclusions, I shall outline the most important results of my investigation, and sketch the ways for the future research of the topic.

The growth of environmental regimes can be understood differently. It can be discussed whether the elaboration of soft law principles, which later will be incorporated into a binding convention, should be regarded as the first step of the regime growth. My opinion is that not all environmental regimes started their life as a set of non-binding principles, and the climate change regime is a good example here. Besides, I see the elaboration of soft law principles as a small auxiliary part of a larger phenomenon, which is the elaboration of a binding convention. In this essay, I do not view more than international work and negotiations on global conventions as the initial step of the regime growth.

2 Theoretical Framework

In this chapter, I am going to focus on the specific features of international environmental law. I shall name different elements, which together construct and develop the global environmental protection. These elements are traditional sources of international law, environmental regimes, soft law, and different actors, including states, intergovernmental organizations (IGOs) and non-governmental organizations (NGOs). I shall thoroughly explain the notions of environmental regimes, IGOs, and soft law.

2.1 Distinguishing Features of International Environment Law

International environmental law possesses a number of specific features, which predetermine its structure. Firstly, like other areas of international law, it does not have a body with law-making powers, compatible to a national parliament.⁴ Secondly, international environmental law does not have any supreme institution or organization, which would serve environmental protection in the way that for example the World Trade Organization (WTO) advances in the field of trade.⁵

Thirdly, the making of environmental laws is much influenced by bio-physical and not geo-political factors.⁶ Environmental disasters do not respect national boundaries. All states contribute to problems of the global commons and all suffer the consequences.⁷ It is difficult for states acting individually to resolve environmental issues. Cooperation between the polluting and the polluted state is necessary.⁸ These common foundations help to avoid political dissensions more frequently than in other areas of international law.

Fourthly, the record of national governments in addressing the causes and consequences of environmental problems is limited. The lack of states' practical action at the international level can be explained by different reasons. National governments might be eager to avoid legal obligations and direct political pressures. They might find it easier to ignore or transfer the costs of inaction to another party, which is often a neighbouring state. It is also likely that individual states lack motivation to act, because they cannot be assured that their neighbours will take similar action.⁹

⁴ Birnie, P., Boyle, A. (2002), p. 10.

⁵ Guruswamy, L. (2003), p. 49.

⁶ *Ibid.*, p. 2.

⁷ Carter, N. (2001), p. 225; Young, O. (1994), p. 23.

⁸ Shaw, M. (2004), p. 754.

⁹ Cormick, J. (2005), p. 83.

This background shapes the structure of international environmental law, which can be sketched in the following way: states are the main subjects of international environmental law, but there is also a large variety of other actors that participate in solving environmental issues.¹⁰ These actors include intergovernmental organizations, regional organizations, treaty specific organizations, multinational corporations and non-governmental organizations.¹¹ Much of the international environmental law making is the result of interplay between these actors, their conference diplomacy, and codification work.¹²

International environmental law is based on the traditional sources of international law, such as conventions, treaties, custom, general principles and judicial decisions.¹³ Conventions contain binding obligations, rules and regulations. Framework conventions may contain only a broad set of principles and aims related to the issue. Subsequently they are strengthened by the negotiation of protocols. Protocols spell out specific binding obligations.¹⁴ The traditional sources are complemented by soft law, which plays an indispensable role in the development of international environmental protection.

2.2 The Notion of Regime in International Environmental Law

The structure of international environmental law is characterised by the presence of environmental regimes. Regimes shape and develop the global environmental protection. There are features that are similar to all international regimes, irrespectively to the area of their existence.

Regimes are sets of implicit and explicit principles, norms, rules, decision-making procedures, and institutions, which actors create or accept to regulate in a particular area of international relations.¹⁵ The notion “principles” means beliefs, causations, and rectitude. Norms are standards of behaviour. Rules are specific prescriptions for action. Decision-making procedures are those prevailing practices, which are used to solve separate questions. Institutions are mechanisms and organizations for implementing, operating, evaluating, and expanding the regime and regime policy.¹⁶

The elements of regimes are elaborated, and implemented through formal agreements, international organizations, soft law, and/or accepted norms of international behaviour. States, as subjects of international law, are primary creators of international regimes, but they are not the only source, and the

¹⁰ Shaw, M. (2004), pp. 754-755.

¹¹ Guruswamy, L. (2003), p. 50.

¹² Compare with Birnie, P., Boyle, A. (2002), p. 10.

¹³ Guruswamy, L. (2003), p. 29.

¹⁴ Carter, N. (2001), p. 229.

¹⁵ Bröms, P. (1995), p. 127; Carter, N. (2001), p. 228; Downie, D. (2005), p. 64; Greene, O. (1996), p. 197; Jönsson, C., Elgström, O., Jerneck, M. (1986), pp. 11, 139.

¹⁶ Downie, D., p. 64 (2005); Jönsson, C., Elgström, O., Jerneck, M. (1986), pp. 11, 139.

involvement of other actors often proves crucial. Regimes usually include components from several interrelated agreements, organizations, standard practices, and shared understandings that together regulate international action in a given area.¹⁷

As a rule, regimes are established through negotiated institutional arrangements, which are characterized by conscious effort of participants to agree on major provisions, and formal expression of the results.¹⁸ Parties that would like to create a regime meet, negotiate, and monitor progress toward achieving the assigned goals.¹⁹

Regimes are long-ranged, but they undergo changes. These changes can depend on economic and political factors, as well as on technological progress.²⁰ The formation and change of environmental regimes may be hastened by ecological disasters, or hampered by their absence. Thus, scientists play an important role in environmental regime formation and change, because they are central in identifying problems, and monitoring the effectiveness of remedial action. Where scientific uncertainty remains, cooperation between states may prove elusive.²¹

According to D. Downie, one of the best-developed regimes in global environmental policy is the ozone regime. Other prominent examples of international environmental regimes are:

- The hazardous waste regime, which includes the 1989 Basel Convention, the 1995 Basel Ban Amendment and the 1999 Basel Protocol on Liability and Compensation. It also includes the Basel Convention Secretariat, Basel Convention Regional Centres, the Conference of Parties, and, to a lesser extent, several regional treaties.
- The global biodiversity regime, which is based on the 1992 Convention on Biodiversity, the 2000 Cartagena Protocol on Biosafety, the Biodiversity Secretariat, and associated funding activities by the Global Environment Facility (GEF). Some species specific and habitat protection treaties can be added, such as the 1973 Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), the 1979 Bonn Convention on the Conservation of Migratory Species of Wild Animals, and the 1991 Ramsar Convention on Wetlands.
- The climate change regime, which consists of the 1992 Convention on Climate Change, the 1997 Kyoto Protocol, intergovernmental organizations supporting these agreements, including the Climate Secretariat, the Intergovernmental Panel on Climate Change (IPCC),

¹⁷ Downie, D. (2005), p. 64.

¹⁸ Young, O. (1989), pp. 84 – 86.

¹⁹ Sjöstedt, G., Spector, B., Zartman, W. (1994), p. 4.

²⁰ Jönsson, C., Elgström, O., Jerneck, M. (1986), p. 140.

²¹ Carter, N. (2001), p. 240.

GEF's Climate Programme, as well as the Conference of the Parties and its numerous subsidiary bodies.²²

2.3 Intergovernmental Organizations (IGOs) in International Law

Unlike NGOs, which members are other subjects than states, IGOs are made up of states or national government bodies.²³ In most cases, member states are formally equal in governing, though not financing, these institutions.²⁴ IGOs generally do not possess autonomy in decision-making.²⁵ IGOs most indispensable role is to provide a forum, where states and other participants can exchange information, and facilitate the compromises necessary for law-making. IGOs also provide legal and technical support, as well as diplomatic help, which individual governments cannot always afford.²⁶

As a rule, IGOs are considered more significant politically than NGOs, as IGOs deal with questions of the security of states and their sovereignty more often.²⁷ The most influential IGOs, that are occupied with environmental issues, are those in the network of UN specialized agencies, such as the World Bank (WB), the Food and Agricultural Organization (FAO), and the United Nations Development Programme (UNDP).²⁸

Although IGOs have a legal personality separate from their members, progress in the development of policy and law might entirely depend on the willingness of member states to propose, adopt and implement new regulations. Everything that emerges from IGOs reflects the interests and concerns of their members.²⁹

2.4 Theories about International Organizations Applied on IGOs

There are two approaches to the role and significance of international organizations. The first one is the realistic approach, which has some character of anarchy. The second one is the interdependence approach. According to the realistic approach, the competence to make final decisions belongs to sovereign states. When states have to deal with the most important questions, they do not leave their decision-making power to international organizations. Thus, an international organization can never mean more than the sum of its members.³⁰

²² Downie, D. (2005), pp. 67-68.

²³ Jönsson, C., Elgström, O., Jerneck, M. (1986), p. 144.

²⁴ Vig, N. (2005), p. 8.

²⁵ Jönsson, C., Elgström, O., Jerneck, M. (1986), p. 145.

²⁶ Birnie, P., Boyle, A. (2002), p. 36.

²⁷ Jönsson, C., Elgström, O., Jerneck, M. (1986), p. 145.

²⁸ McCormick, J. (2005), p. 86.

²⁹ Birnie, P., Boyle, A. (2002), p. 36.

³⁰ Jönsson, C., Elgström, O., Jerneck, M. (1986), p. 151.

Representatives of the interdependence approach suppose that international organizations are much more significant. International organizations can be more than the sum of their members. These organizations play an important role in the creation, implementation and changing of international regimes. Representatives of the interdependence approach add that international organizations are surrounded by many other international and national organizations.³¹ Together, they create some kind of a net, which depicts the reality with help of nodes and links between them. In the case of inter-organizational nets, nodes represent interdependent organizational units both at the national and international levels.³²

Further in my work, I am going to apply the interdependence approach to the phenomenon of international environmental organizations. Because IGOs are considered more significant politically than NGOs,³³ I shall view IGOs as bigger nodes than NGOs in the net-picture.

I cannot agree with the realistic approach, according to which I should depict IGOs as toothless associations with marginal significance. This point of view is wrong and dangerous. I share the opinion of those scientists, who emphasize that IGOs do a lot of work, which is important and useful for the world states.³⁴ I think that this work plays a significant role for decision-making and administration at national levels. No state can ignore IGOs and their staff.

Another aspect, which representatives of the interdependence approach underline, is that in inter-organizational nets it is possible for some organizations to take leading positions.³⁵ Moreover, when we talk about organizations, we should not forget that there are people, who actually make decisions and act, mainly those people, who have leading positions, and those, who build secretariats.³⁶

A weak point about international organizations is that sometimes it is difficult to divide the spheres of their responsibilities. This statement is especially true about environmental IGOs. Environmental issues are the subject of interest of such a variety of organizations as the United Nations Environment Programme (UNEP), UNDP, WTO, FAO, etc.³⁷

2.5 The Notion of Soft Law

It is not possible to confine the corpus of international environmental law to the formal and traditional sources of international law. International

³¹ *Ibid.*

³² Jönsson, C. (2001), p. 205.

³³ Jönsson, C., Elgström, O., Jerneck, M. (1986), p. 145.

³⁴ Compare with Jönsson, C. (2001), p. 203.

³⁵ *Ibid.*, p. 206.

³⁶ Jönsson, C., Elgström, O., Jerneck, M. (1986), p. 153.

³⁷ McCormick, J. (2005), p. 86.

environmental law has witnessed the growth of a significant and increasing body of soft law principles.³⁸

Soft law in international environmental matters has the form of recommendations, guidelines, resolutions, and declarations of principles, often within the context of frameworks or umbrella treaties. These instruments are clearly not traditional law, but they do not lack authority. They are all carefully negotiated and in many cases are intended to have normative significance despite their non-binding form.³⁹

Soft law instruments possess the potential to have important legal consequences. The adoption of a non-binding instrument at a major international conference represents evidence of state practice, which can become the basis for the development of customary international law.⁴⁰ Another impact of soft law instruments is that they present the opportunity for states to deal with matters, which could not formally be considered under a legally binding instrument. Because of the nature of the instrument adopted, states will be more prepared to accept non-binding instruments and documents than the legally binding equivalent. As a result, soft law instruments can form the foundation for enhanced international cooperation dealing with certain environmental matters, which could not otherwise be successfully dealt.⁴¹ What is more, soft law may lead to the future development of “harder” law in the given area.⁴²

My point of view is that soft law plays an important role in the development of environmental regimes. It expresses general opinion on certain basic principles, which are accepted and practiced by the world community. It contributes to the development of international and national law, and to the harmonization of environmental law at the global level. However, it should be observed that the substance of soft law is not so vague or imprecise, that it has no legal content at all.

2.6 Conclusions from the Theoretical Framework

In this chapter, I have underlined the specific features of international environmental law. Among the elements typical for international environmental law, there are traditional sources of law, environmental regimes, soft law, and different actors, including states, IGOs and NGOs. I have come to the following conclusions.

³⁸ Guruswamy, L. (2003), p. 29.

³⁹ Birnie, P., Boyle, A. (2002), p. 25; Dixon, M. (2005), p. 47.

⁴⁰ Customary international law is created as a result of consistent state practice and evidence, which states believe they are under a legal obligation to respect (UNEP Training Manual, 1997, p. 31).

⁴¹ UNEP Training Manual (1997), p. 31.

⁴² Dixon, M. (2005), p. 47.

Regimes are sets of implicit and explicit principles, norms, rules, decision-making procedures, and institutions. They are usually created through negotiated institutional arrangements, when parties to the future regime met, negotiate, and try to achieve the assigned goals. Later, the parties address the binding and non-binding agreements that serve as the regime's foundation, revise them when the situation demands, and resolve new problems. The creation and change of environmental regimes may be hastened by ecological disasters, or hampered by their absence.

Though states are the only subjects of international law, they are not the only actors that participate in the creation of international regimes. According to interdependence approach, IGOs play an important role in the foundation, implementation and changing of international regimes. IGOs are built up of states and are more than the sum of their members. They are surrounded by many other international and national organizations, which together create some kind of a net. This net depicts the reality with help of nodes and links between them. Generally, IGOs do not possess autonomy in decision-making. Progress in the development of international policy and law might entirely depend on the willingness of member states to propose, adopt and implement new regulations.

When we talk about IGOs, we should not forget that there are people, who actually make decisions and act, mainly those people, who have leading positions and build secretariats.

International environmental law is also shaped by a significant body of soft law principles, recommendations, guidelines, resolutions, or declarations, often within the context of frameworks or umbrella treaties. Soft law plays an important role in the development of environmental regimes. It also contributes to the harmonization of environmental law at the global level.

3 Case Studies

This chapter is devoted to the study of three examples, which illustrate the growth of three international environmental regimes - the hazardous waste regime, the global biodiversity regime, and the climate change regime. All these regimes contain multilateral conventions. The elaboration of these conventions will be viewed as the initial stage in the process of the regimes' development. I shall mark with the bold style the key words in the text, which will be used for analysis in Chapter IV.

3.1 The Growth of Environmental Regimes

The growth of the hazardous waste regime, the global biodiversity regime, and the climate change regime was caused by the rise of environmental problems, subsequent scientific and public response to them, and political action. Political action consisted of different components, such as discussions at international political meetings, taking the decision to elaborate a global convention, choosing the actor(s) responsible for the work on the convention, and conduct of negotiations. Negotiations included the formation of working groups, formal and informal discussions, as well as the final conference, where the binding convention was adopted.

I see multilateral conventions as very important parts of environmental regimes. Other significant parts are soft law principles, decision-making procedures and institutions.⁴³ The regimes that I have chosen for my case study, contain multilateral conventions, which I regard as backbones of these regimes. Thus, the hazardous waste regime has the Basel Convention. The global biodiversity regime contains the Convention on Biodiversity, and the climate change regime - the Convention on Climate Change.

Other elements of the chosen regimes (for example the Basel Ban Amendment and the Basel Protocol on Liability and Compensation in the hazardous waste regime, or the Cartagena Protocol on Biosafety and the Biodiversity Secretariat in the global biodiversity regime), are subsidiary to the conventions. The creation and functioning of these elements became possible only after the creation of the conventions. Besides, the conventions formulate the main principles, which determine the subsequent growth of the regimes. The conventions settle on the form and content of the following regime elements.

The hazardous waste regime, the global biodiversity regime, and the climate change regime were created as negotiated institutional arrangements.⁴⁴ They arose through the joint efforts to agree on their major provisions, explicit concern of participants, and formal expression of the results. My opinion is

⁴³ See section 2.2 Chapter II.

⁴⁴ Compare with *Ibid.*

that the growth of the three regimes is described by the elaboration of the multilateral conventions, which I have called the backbones of these regimes.

3.2 The Growth of the Hazardous Waste Regime: the Basel Convention

The growth of the hazardous waste regime is characterized by the elaboration of the Basel Convention. This convention was adopted on 22 March 1989 in Basel by the Conference of the Plenipotentiaries, and opened for signature on the same date, 22 March 1989. It was directly signed by 36 government leaders. The convention entered into force on 5 May 1992. Today it has **168 state parties**.⁴⁵

3.2.1 The Main Issue of the Convention

The Basel Convention is aimed **to control the movement of hazardous wastes** and other wastes across international frontiers.⁴⁶ Its central goal is environmentally sound management, which aims to protect human health and the environment by minimizing hazardous waste production whenever possible.⁴⁷ The convention recognizes the need for development and implementation of environmentally sound low-waste technologies, recycling options and good management systems.⁴⁸

3.2.2 Grounds for the Convention

International awareness of the problem of transboundary movements of hazardous wastes started to emerge in the early 1980s. This awareness was caused by the tightening of environmental regulations in industrialized countries, which led to a dramatic rise in the cost of hazardous waste disposal. Searching for cheaper ways to get rid of the wastes, “toxic traders” began shipping hazardous waste to developing countries and to Eastern Europe. When this activity was revealed, international outrage led to the drafting and adoption of the Basel Convention.⁴⁹

3.2.3 Responsible Actors and Initial Texts

In the early 1980s UNEP became one of the first international organizations that addressed the issue of hazardous waste trade. It included the

⁴⁵ Website: The Basel Convention, the text can be found at <http://www.basel.int/ratif/frsetmain.php>; last entered 19-09-2006 at 09.33.

⁴⁶ Art. 1 and 4 the Basel Convention.

⁴⁷ Birnie, P., Boyle, A. (2002), p. 433.

⁴⁸ UNEP Training Manual (1997), p. 195.

⁴⁹ Website: The Basel Convention, the text can be found at <http://www.basel.int/pub/basics.html>; last entered 21-09-2006 at 10.54; Agarwal, A., Narain, S., Sharma, A., Imchen, A. (2001), p. 63; Downie, D., Krueger, J., Selin, H. (2005), p. 128; Kummer, K. (1995), p. 42.

international regulation of hazardous wastes as one of the goals of **the Montevideo Programme** for the Development and Periodic Review of Environmental Law, 1981.⁵⁰ UNEP commissioned an international group of experts to make up general guidelines on the environmentally sound management of hazardous wastes. From 1984 to 1985, the working group met to define issues, examine facts, and develop the guidelines.⁵¹

On 17 June 1987, the General Council of UNEP (UNEP GC) adopted non-binding principles developed by the working group, known as **the Cairo Guidelines**.⁵² These guidelines acknowledged the need to respect international law applicable to the protection of the environment, and sought to ensure environmentally sound management of wastes.⁵³

At the same time, **the Organization for Economic Co-operation and Development (OECD)** was also working at the problem of hazardous waste trade. In 1984, it created a set of guiding principles for the control of transfrontier movements of hazardous wastes within OECD area.⁵⁴ OECD also developed a draft international agreement that originated from a recommendation at a 1985 OECD sponsored conference on International Cooperation Concerning Transfrontier Movements of Hazardous Wastes. This document was presented to OECD Environment Committee in 1988.⁵⁵

The European Community (EC) was also developing a series of documentations about transfrontier shipments of hazardous wastes. In 1984, it adopted directive 84/631,⁵⁶ which regulated the transboundary movement of toxic and dangerous wastes within EC. This directive was subsequently amended in 1986 to cover movements to countries outside EC.⁵⁷

3.2.4 The Beginning of Negotiations

At the 14th UNEP GC in 1987,⁵⁸ UNEP's executive director, Mostafa Tolba, was authorized to convene a Working Group of Legal and Technical Experts with a mandate to prepare a global convention on the control of the transboundary movement of hazardous wastes.⁵⁹ When UNEP became responsible for this task, OECD suspended its further work on the issue.⁶⁰

⁵⁰ UNEP Training Manual (1997), p. 194.

⁵¹ Chasek, P. (2001), p. 111.

⁵² The Cairo Guidelines and Principles for the Environmentally Sound Management of Hazardous Wastes, UNEP GC Decision 14/17 (1987) Annex II.

⁵³ Birnie, P., Boyle, A. (2002), p. 429; Downie, D., Krueger, J., Selin, H. (2005), p. 130.

⁵⁴ OECD Council Decision C(83)180.

⁵⁵ Krueger, J. (1999), pp. 22-23.

⁵⁶ EC directive 84/631 of 6 December 1984 on *the Supervision and Control within the European Community of the Transfrontier Shipment of Hazardous Waste*.

⁵⁷ Agarwal, A., Narain, S., Sharma, A., Imchen, A. (2001), pp. 74 - 75; Chasek, P. (2001), p. 111; Krueger, J. (1999), p. 25.

⁵⁸ Website: UNEP, the text can be found at

<http://www.unep.org/Documents.Multilingual/Default.asp?DocumentID=100>; last entered 19-09-2006 at 11.35.

⁵⁹ Chasek, P. (2001), p. 111.

⁶⁰ Krueger, J. (1999), p. 23.

The organizational session of the Working Group of Legal and Technical Experts was held in October 1987, in Budapest. African States wanted a total ban on waste exports, and export-state liability in the event of illegal traffic in wastes. Most industrialized countries, supported by UNEP, preferred imposed controls but not an outright ban. They claimed that this would allow an economically sensible transport and trade in wastes, mainly among industrialized countries with sound waste disposal methods.⁶¹

There were also fundamental disagreements on how comprehensive the convention should be. Some delegates had an opinion that the treaty should be general in character, leaving technical issues to future protocols or to bilateral and regional agreements. Another point of view was that the future convention should contain comprehensive and detailed controls.⁶²

In the end, delegates requested that the secretariat of UNEP should draft the convention, taking into consideration the Cairo Guidelines, the results of the work of OECD and EC, as well as statements made by the delegates at the organization session.⁶³

3.2.5 Negotiations in Full Speed

The first substantial session of the Working Group took place in February 1988, in Geneva. Experts from 31 countries attended the meeting. OECD was scheduled to meet to develop a core list of hazardous wastes later in February. Because of that, many discussions at UNEP's meeting were postponed until OECD's meeting had finished.⁶⁴ Negotiations were based on a draft text submitted by the secretariat. Delegates addressed a number of key issues, including the question of "prior informed consent" under which both the nation accepting the shipment of wastes and the country shipping them have to agree before a shipment can be made. Developing countries insisted that the principle of prior informed consent should be included in the convention.⁶⁵

It remained unclear how a transit country would handle the concept of prior informed consent and whether it would have the right to require its written approval before a shipment of hazardous wastes crosses its territory. The issue of whether experts should have the obligation to receive hazardous wastes back into their territory was also a matter of disagreement. Other topics for continuous discussions included the definition of hazardous wastes and their disposal, as well as how and where disposal should be handled.⁶⁶

⁶¹ Agarwal, A., Narain, S., Sharma, A., Imchen, A. (2001), p. 65; Downie, D., Krueger, J., Selin, H. (2005), p. 130; Kummer, K. (1995), p. 43.

⁶² Chasek, P. (2001), p. 112.

⁶³ *Ibid.*

⁶⁴ *Ibid.*

⁶⁵ *Ibid.*

⁶⁶ *Ibid.*

The second substantial session of the Working Group was held in June 1988, in Caracas. It was attended by 40 governments, 22 of which were from developing countries. This was an indication of the interest, which developing countries had over the issue of the transboundary movement of hazardous wastes.⁶⁷ Using the draft of UNEP's secretariat as a starting point, the Working Group agreed to base the definitions of hazardous wastes on the list of categories and characteristics of wastes approved in May by OCED's Working Group on International Waste Shipment.

The delegates agreed that the convention would not include nuclear wastes, because this aspect fell under the jurisdiction of the International Atomic Energy Agency (IAEA). General agreements were reached on the procedures for advanced notification of transboundary shipments of wastes to countries of import and transit, on the establishment of a prior informed consent mechanism for importing countries, and on the duty to re-import wastes when a shipment could not be completed as foreseen. The group decided on the establishment of a special secretariat to facilitate the implementation of the future convention.⁶⁸ Disagreements still existed on the questions of shipment of wastes to developing countries, the definition of hazardous wastes and the position of third parties in the shipment of wastes.⁶⁹

The third meeting of the Working Group was organized in November 1988, in Geneva. Participants reviewed the fourth draft of the convention, which consisted of 29 articles and 5 annexes. One of the annexes contained a list of wastes to be controlled under the convention. Issues that continued to block consensus included the rights of transit states, the status of "offshore" or depended territories, and territorial waters. Progress was made in a range of questions, including the acceptance of a "limited ban". This concept meant that a party to the convention might not export or import hazardous wastes from or to a country, which did not ratify the convention. A new article on control of illegal traffic was also accepted.⁷⁰

The fourth meeting of the Working Group, where delegates from 50 countries were present, was held in February 1989, in Luxembourg. There was disagreements whether silence from a transit country would represent its tacit consent for hazardous waste shipments passing through its territory. Developing countries like Nigeria wanted the participants to focus on the issue of liability before signing the convention. Developed countries, on the other hand, stated that this issue could not be settled so early, and that it should be postponed until the convention came into force. Finally, the delegates agreed to exclude the question of offshore territories such as the British Channel Islands or the United States (US) Virgin Islands from the proposed text.⁷¹

⁶⁷ Tolba, M. (1998), p. 102.

⁶⁸ Agarwal, A., Narain, S., Sharma, A., Imchen, A. (2001), p. 78.

⁶⁹ Chasek, P. (2001), p. 113.

⁷⁰ *Ibid.*

⁷¹ Agarwal, A., Narain, S., Sharma, A., Imchen, A. (2001), p. 79.

3.2.6 Closing Negotiations

The fourth meeting in Geneva was followed by **informal consultations** conducted by M. Tolba. Not much progress was made. When the Working Group met for its **final fifth session** in March 1989, in Basel, there were still three major difficulties. The position of US remained disappointing, especially regarding the relation of municipal wastes to hazardous wastes. The problem of national legislation and regulations, which might be difficult to change if they contradicted the text of the convention, and some reservations that needed final clarification by various countries, were also left for discussions.⁷² There was not much time left, and the success of the negotiations became uncertain.⁷³

The Organization of African Unity (OAU) presented about 24 different amendments to the draft convention, including amendments to prevent the export of wastes to developing countries, as well as to any other countries that lack the same level of facilities and technology as the exporting nations. OAU also proposed required inspection of disposal sites by UN inspectors, but developed countries rejected the amendments.⁷⁴

After a 10-hour session of informal consultation, most of the issues were resolved. There was no agreement on the issue of exporting-state liability. It was agreed to leave this for a future protocol to the convention. The Basel Convention was adopted as it had been planned at the Conference of Plenipotentiaries on 22 March 1989. At the opening of the adoption ceremony, the environment minister of Mali stated that African countries were not prepared to sign the convention, which was too weak to meet their demands. They would withhold their final position until further discussions within OAU forum. Some developed countries, including US, Japan and the United Kingdom (UK) also deferred their decision on signature, for exactly the opposite reason – that the convention placed too many regulatory controls. In spite of that, 20 parties had ratified the Basel Convention by February 1992, and it entered into force on 5 May 1992.⁷⁵

3.2.7 Subsequent Documents

The strengthening of the Basel Convention occurred in 1995, when the Ban Amendment was adopted. This document regulates the ban on transboundary movements of waste from OECD to non-OECD countries. Further strengthening of the convention took place in 1999, when the Protocol on Liability and Compensation was adopted. This protocol deals with the principles of liability and compensation for damage resulting from transboundary movements of wastes.⁷⁶

⁷² Tolba, M. (1998), p. 111.

⁷³ Kummer, K. (1995), p. 45.

⁷⁴ Tolba, M. (1998), p. 114.

⁷⁵ Agarwal, A., Narain, S., Sharma, A., Imchen, A. (2001), p. 79; Kummer, K.(1995), p. 45.

⁷⁶ Birnie, P., Boyle, A. (2002), p. 435.

3.2.8 Conclusions

The growth of the hazardous waste regime is characterized by the elaboration of the Basel Convention. This convention cannot be called a framework convention. It is more substantial, though the issue of exporting-state liability has been left for a future protocol. The convention originated from the Cairo Guidelines, and other documents from OECD and EC. UNEP, OECD and EC were the first actors that addressed the problem of shipping hazardous wastes from developed countries to developing countries. UNEP, and more particularly the Working Group of Legal and Technical Experts under UNEP's control, played the central role during the negotiations of the convention.

There were many disagreements throughout the negotiations, mainly between developed countries and African States. The latter wanted a total ban on waste exports as well as export-state liability in the event of illegal traffic in wastes. Besides, there were constant discussions about how detailed the future convention should be. M. Tolba, UNEP's executive director, was the person that contributed to the successful adoption of the convention. Six meetings of the Working Group of Legal and Technical Experts, and informal consultations conducted by M. Tolba became necessary to complete the negotiations. The convention entered into force three years and 1,5 months after its opening for signature, when it had been ratified by 20 parties. In 1995 the convention was strengthened by the Ban Amendment, and in 1999 – by the Protocol on Liability and Compensation.

3.3 The Growth of the Global Biodiversity Regime: the Convention on Biodiversity

The growth of the global biodiversity regime is described by the elaboration of the Convention on Biodiversity, which was adopted on 22 May 1992, and opened for signature on 5 June 1992 at the UN Conference on Environment and Development in Rio de Janeiro, Brazil (UNCED). It was directly signed by more than 150 governments.⁷⁷ The convention entered into force on 29 December 1993. It became one of the most widely ratified environmental conventions. Today it has **188 state parties**.⁷⁸

3.3.1 The Main Issue of the Convention

The convention **addresses three main issues**: the conservation of **biological diversity**, the sustainable use of its components, and the fair and equitable sharing of the benefits arising out of the utilization of **genetic resources**.⁷⁹ It creates a new regulatory regime for large-scale natural

⁷⁷ Earth Negotiations Bulletin 09:49; Nanda, P. (1995), p. 119.

⁷⁸ Website: Convention on Biological Diversity, the text can be found at <http://www.biodiv.org/world/parties.asp>; last entered 14-09-2006 at 20.25.

⁷⁹ Art. 1 Convention on Biological Diversity; Agarwal, A., Narain, S., Sharma, A. (1999), p. 125; Birnie, P., Boyle, A. (2002), p. 571; UNEP, *Global Biodiversity* (1993), p. 38.

resource depletion. The convention remains partially controversial. It exemplifies difficult policy choices that governments have to make trying to integrate economic and environmental considerations.⁸⁰

3.3.2 Grounds for the Convention

Actual negotiations of the Convention on Biodiversity did not begin until 1990, but international concern about the loss of the earth's biological diversity arose already in the 1980s. By that time, it became clear that human activity, mainly the destruction of tropical rainforests, wetlands, and marine ecosystems, had an irreversible effect on the loss of individual species. Scientists and NGOs started to publish reports, which called for a decisive action to conserve and maintain genes, species and ecosystems.⁸¹

3.3.3 Responsible Actors and Initial Texts

The Convention on Biodiversity started life as a document made up by the International Union for the Conservation of Nature and Natural Resources (IUCN) on the *in situ* conservation of biodiversity (i.e. the conservation of species inside their natural habitat)⁸². This document was submitted to UNEP.⁸³ UNEP contributed much to the elaboration of the convention.⁸⁴ It held three UNEP GCs at which political decisions on preparations for the convention were taken; a large number of working sessions of working groups on the questions of biological diversity and biotechnology; several negotiating sessions for state governments, and UNCED itself.⁸⁵

The first concrete step towards the negotiation of the convention took place at the **14th UNEP GC in 1987**.⁸⁶ US proposed that the world community should start working at a global convention on biological diversity. The purpose of this convention should be the rationalization of existing international conservation agreements and their variously located secretariats. UNEP GC took up the US proposal.⁸⁷

In its **decision 14/26**, UNEP GC recognized the need for adequate protection and preservation of biological diversity on earth.⁸⁸ It requested UNEP's executive director to establish a working group to investigate in close collaboration with international organizations the desirability and

⁸⁰ Birnie, P., Boyle, A. (2002), p. 43.

⁸¹ Chasek, P. (2001), p. 117.

⁸² Art 2 Convention on Biological Diversity; Birnie, P., Boyle, A. (2002), p. 577; Bowman, M., Redgwell, C. (1996), p. 35.

⁸³ UNEP, *Global Biodiversity* (1993), p. 37; UNEP Training Manual (1997), p. 53.

⁸⁴ Timoshenko, A., Berman, M. (1996), p. 41.

⁸⁵ McConnell, F. (1996), preface.

⁸⁶ Website: UNEP, the text can be found at

<http://www.unep.org/Documents/Multilingual/Default.asp?DocumentID=100>; last entered 19-09-2006 at 11.35.

⁸⁷ UNEP (1987), *Report of the Governing Council on the Work of its 14th Session*, p. 23.

⁸⁸ UNEP GC decision 14/26, 17-06-1987, *Rationalization of International Conventions on Biological Diversity*; UNEP Training Manual (1997), p. 53.

possible form of an umbrella convention in the area.⁸⁹ By “an umbrella convention”, UNEP GC meant a legal instrument that would consolidate the existing treaties into a workable whole, eliminating jurisdictional overlap and filling perceived gaps.⁹⁰

3.3.4 The Beginning of Negotiations

In response to decision 14/26, UNEP overviewed all international treaties, together with intergovernmental and non-governmental activities, which existed in the field of biological diversity. UNEP tried to identify gaps and overlaps among them. The results of this work were discussed at **the meeting of senior advisers** and UNEP’s executive director. The senior advisers recommended that the new convention should have focus on habitat preservation. They also emphasized that special attention should be paid to the area of genetic resources of plants and biotechnology. They stressed that the latter subject would probably need a separate study.⁹¹

The Working Group of Experts on Biological Diversity, established after the 14th UNEP GC, held its **first meeting** in November 1988, in Geneva.⁹² This group outlined that the existing conventions addressed separate questions of biodiversity conservation, but did not adequately meet the needs of conserving biodiversity worldwide. The group recommended the preparation of a new convention on biological diversity, which would close the gaps between existing conventions.⁹³

When the discussion of the future biodiversity convention resumed at the **15th UNEP GC** in 1989,⁹⁴ contradictions between the positions of different states became evident. US were interested in developing an umbrella convention, but reacted strongly against the proposals to include biotechnology in the convention. Developing countries made it clear that if biotechnology was excluded, they would oppose any new convention.⁹⁵

In **decision 15/34**, UNEP GC requested the executive director of UNEP to arrange additional working sessions of the working group of experts on biological diversity. The purpose of these sessions was to consider the technical side of the development of the new legal instrument, and other measures that might be adopted for the conservation of the biological diversity on earth.⁹⁶

⁸⁹ *Ibid.*

⁹⁰ Guruswamy, L. (2003), p. 134.

⁹¹ Chasek, P. (2001), p. 118.

⁹² Agarwal, A., Narain, S., Sharma, A. (1999), p. 127.

⁹³ Chasek, P. (2001), p. 118.

⁹⁴ Website: UNEP, the text can be found at

<http://www.unep.org/Documents.Multilingual/Default.asp?DocumentID=71>; last entered 19-09-2006 at 11.35.

⁹⁵ Chasek, P. (2001), p. 118; McConnell, F. (1996), p. 11.

⁹⁶ Website: UNEP, the text can be found at

<http://www.unep.org/Documents.Multilingual/Default.asp?DocumentID=71&ArticleID=963&l=en>; last entered 19-09-2006 at 11.40.

3.3.5 Negotiations in Full Speed

The second session of the Working Group of Experts on Biological Diversity took place in February 1990, in Geneva. Delegates from 41 countries came to the meeting to work at the content of the new convention with a special focus on its socio-economic context. The working group identified spheres of basic conservation and utilization needs, as well as the scope of financing difficulties. It requested the executive director of UNEP to initiate a number of studies with the purpose to clarify some issues of the new legal instrument.⁹⁷

The third session of the Working Group of Experts on Biological Diversity was held in July 1990, in Geneva. Representatives from 78 countries agreed that in dealing with financial mechanisms, broad estimates of costs should be accepted. Delegates concluded that complex issues involved in biotechnology needed further scientific examination, before the set of elements covering this topic could be agreed upon. A special sub-working group, responsible for biotechnological issues, was established. This **sub-group met** later in November 1990, in Nairobi.⁹⁸

At the **special session of UNEP GC** in August 1990, the Working Group of Legal and Technical Experts was established. This group got the task to revise the results of the three sessions of the working group of experts on biological diversity, as well as the outcomes of the sub-working group on biotechnology, and prepare for the actual negotiation of the draft articles of the convention.⁹⁹

The Working Group of Legal and Technical Experts had its **first session** in November 1990, in Nairobi. It discussed the elements of the future convention, and established the principle of national sovereignty over natural resources.¹⁰⁰ The Nordic countries proposed that the convention should deal with sustainable development rather than biodiversity. Developing countries stated that there would be no negotiations before developed countries committed themselves to fund all conservation actions in developing countries.¹⁰¹

By the end of this meeting, it was agreed that the future convention should reflect the interplay between biological diversity and related technologies. The delegates also agreed that the convention without funds to meet biodiversity conservation costs would be meaningless.¹⁰² Developing countries, led by Brazil, India, and China, pressed the point that the future convention must allow them access to expertise in biotechnology. This

⁹⁷ Bowman, M., Redgwell, C. (1996), p. 35; Chasek, P. (2001), p. 119.

⁹⁸ McConnell, F. (1996), p. 23.

⁹⁹ UNEP, *Report of the Governing Council on the Work of its Second Special Session*, p. 29; Chasek, P. (2001), p. 119.

¹⁰⁰ Agarwal, A., Narain, S., Sharma, A. (1999), p. 136.

¹⁰¹ McConnell, F. (1996), p. 25.

¹⁰² Agarwal, A., Narain, S., Sharma, A. (1999), p. 136; Chasek, P. (2001), p. 119.

would enable them to exploit their biological resources. Developed countries disagreed, insisting that the convention should concentrate on conserving areas of great biodiversity that are not protected by existing conventions and agreements. Thus, the divided interests of Northern and Southern countries hampered the negotiations.¹⁰³

At the next session of the Working Group of Legal and Technical Experts from 25 February to 6 March 1991, in Nairobi, UNEP presented the draft convention and draft rules of the procedure for the negotiating process. Participants agreed on the future organization of work, including further meetings and the preliminary date for the adoption of the convention in 1992. Two sub-working groups were formed to analyse the revised draft convention. Sub-working group I dealt with objectives, general obligations, conservation provisions, measures and institutional actions at the national level. Sub-working group II focused on access to biodiversity and technical information, transfer of technology, technical cooperation, and finance.¹⁰⁴

The secretariat of UNEP circulated the revised draft convention, which included all draft articles. This marked the first real consolidated draft convention and allowed governments to move to the negotiations of the text.¹⁰⁵

At the 16th UNEP GC in May 1991, in Nairobi¹⁰⁶ the Working Group of Legal and Technical Experts was renamed into the Intergovernmental Negotiating Committee for a Convention on Biological Diversity (INC), though the scope of its responsibilities did not change.¹⁰⁷ **The third session of the Working Group of Legal and Technical Experts**, with the new title **INC**, took place in June - July 1991, in Madrid. **The fourth session of INC** was arranged in September – October 1991, in Nairobi, with the purpose to work at the second revised draft of the convention.¹⁰⁸

At the fifth session of INC in November – December 1991, in Geneva, sub-working group II established four additional sub-working groups to deal with the most problematic issues, such as the cost of taking measures to protect biodiversity, or the consequences and impact of biodiversity conservation on trade and development.¹⁰⁹

The sixth session of INC was held in February 1992, in Nairobi. During it, most of the North – South differences diminished. Among the questions, which were left, there was the relation between *ex situ* and *in situ*

¹⁰³ Agarwal, A., Narain, S., Sharma, A. (1999), p. 137; Tolba, M. (1998), p. 145.

¹⁰⁴ McConnell, F. (1996), p. 32; UNEP Training Manual (1997), p. 54.

¹⁰⁵ Chasek, P. (2001), p. 120.

¹⁰⁶ Website: UNEP, the text can be found at

[http://www.unep.org/Documents.multilingual/Default.asp?DocumentID=55&ArticleID=;](http://www.unep.org/Documents.multilingual/Default.asp?DocumentID=55&ArticleID=)
last entered 16-09-2006 at 17.05.

¹⁰⁷ UNEP GC decision 16/42, *Preparation of an International Legal Instrument on Biological Diversity*.

¹⁰⁸ Chasek, P. (2001), p. 120.

¹⁰⁹ *Ibid.*

conservation, the establishment of lists of threatened and/or otherwise important species and ecosystems, rights of the country of origin, and financial support.¹¹⁰

3.3.6 Closing Negotiations

The final session of INC took place in May 1992, in Nairobi. Though it was planned to sign the convention at UNCED, which was due to begin on 3 June 1992, little progress was made in reaching the agreement on the final details of the convention.¹¹¹ The initiative taken by M. Tolba helped to solve the situation. He disbanded the sub-working groups and suggested that final decisions should be taken in Plenary. Together with INC's chair Vincete Sanchez, M. Tolba met the heads of 20 key delegations and discussed the most problematic issues.¹¹²

Until the very last moment, it was unclear whether the convention would be signed at UNCED, much because of the North – South confrontations concerning the financial mechanism for the convention. Besides, France wanted to include the global lists of endangered species, principles, and links to other conventions. US opposed the recognition of biological resources as the property of nations.¹¹³

After the break in the work of the Plenary, the following procedure was organized: the Plenary continued by going through the text of the convention article-by-article, until the agreement was reached. All complicated issues were given to small contact groups to resolve. If the contact groups were not able to reach agreement, the text in questions was to be sent to the core group of the heads of 20 key delegations under M. Tolba's leadership. In such a way, the convention was concluded by 6:00 pm on the last day of the scheduled negotiations.¹¹⁴

As it had been planned, the Convention on Biodiversity was adopted on 22 May 1992 and opened for signature during UNCED in June 1992. 30 parties had ratified the convention by October and it entered into force on 29 December 1993.¹¹⁵

3.3.7 Subsequent Documents

The further strengthening of the Convention on Biodiversity occurred in 2000, when the Cartagena Protocol on Biosafety was adopted. This protocol seeks to protect biological diversity from the potential risks posed by living modified organisms resulting from modern biotechnology. The protocol also establishes a Biosafety Clearing-House to facilitate the exchange of

¹¹⁰ *Ibid.*, p. 121.

¹¹¹ McConnell, F. (1996), p. 89.

¹¹² Chasek, P. (2001), p. 121.

¹¹³ Agarwal, A., Narain, S., Sharma, A. (1999), p. 138.

¹¹⁴ Johnson, S. (1993), p. 82.

¹¹⁵ McConnell, F. (1996), p. 116.

information on living modified organisms and to assist countries in the implementation of the protocol.¹¹⁶

3.3.8 Final Reflections

The Convention on Biodiversity is not an umbrella convention. It became a framework convention, as it proved to be politically unattainable to negotiate an umbrella convention on this subject. The convention lays down various guiding principles which state parties are required to take into account in developing national law and policy. There is a possibility to add subsequent ad hoc protocols, which would lay down more specific and detailed requirements on state parties.¹¹⁷

3.3.9 Conclusions

The growth of the global biodiversity regime is characterized by the elaboration of the Convention on Biodiversity. This regime addresses the problem of biodiversity loss, caused by human activity. The Convention on Biodiversity has the feature of a framework convention. It originates from a document prepared by IUCN. US was the first actor to suggest the elaboration of this convention at the 14th UNEP GC. UNEP established the Working Group of Experts on Biological Diversity, and then the Working Group of Legal and Technical Experts, which was later renamed into INC. These IGOs played the central role during the negotiations of the convention.

There were many disagreements throughout the negotiations, mainly the North – South confrontations, concerning such questions as whether biotechnology should be included, whether access to expertise in biotechnology should be given to developing countries, and about financial mechanisms for the convention. M. Tolba, UNEP's executive director, and V. Sanchez, INC's chair, were the persons that contributed much to the successful adoption of the convention. A meeting of senior advisers, 3 meetings of the Working Group of Experts on Biological Diversity, and 7 meetings of INC became necessary to complete the negotiations. The convention entered into force 1 year and 6,5 months after its opening for signature, when it had been ratified by 30 parties. Strengthening of the convention occurred in 2000, with the adoption of the Cartagena Protocol on Biosafety.

¹¹⁶ Website: the Convention on Biodiversity, the text can be found at <http://www.biodiv.org/biosafety/background.shtml>; last entered 19-10-2006 at 21.18.

¹¹⁷ Birnie, P., Boyle, A. (2002), p. 571.

3.4 The Growth of the Climate Change Regime: the Convention on Climate Change

The growth of the climate change regime is characterized by the elaboration of the Convention on Climate Change. This convention was adopted on 9 May 1992, and opened for signature almost simultaneously with the Convention on Biodiversity, on 4 June 1992 at UNCED. The convention was directly signed by more than 150 governments. It entered into force on 21 March 1994. It enjoys nearly universal membership, with **189 countries** having ratified it.¹¹⁸

3.4.1 The Main Issue of the Convention

The Convention on Climate Change constructs a framework for **the stabilization of greenhouse gas concentrations** at levels, which would prevent dangerous anthropogenic interference with the climate system.¹¹⁹ The convention does not name any firm targets or deadlines. Developed countries are given the voluntary goal of returning greenhouse gas emissions to 1990 levels.¹²⁰ The convention identifies a set of principles, such as precaution, equity, co-operation and sustainability. It can be said that the convention represents “not an end point, but rather a punctuation mark in an ongoing process of negotiation”.¹²¹

3.4.2 Grounds for the Convention

The scientific consensus towards the problem of climate change arose slowly during the 1980s. At **the World Climate Programme Conference** in 1985, in Austria, the scientific conclusion was reached that increased carbon dioxide concentrations would lead to a significant rise in surface temperatures.¹²² Over the next five years, this opinion became stronger as the quality of the data and the climate models improved. A deeper realization of the problem came after a series of natural disasters, like a tropical storm in UK in 1987, droughts in US in 1988, and some others. These events raised public awareness of the threat of global warming, and contributed to the rapidity with which this issue moved up the political agenda.¹²³

¹¹⁸ Website: Convention on Climate Change, the text can be found at http://unfccc.int/essential_background/convention/items/2627.php; last entered 21-09-2006 at 14.19.

¹¹⁹ *Ibid.*, art. 2 Convention on Climate Change.

¹²⁰ Carter, N. (2001), p. 234.

¹²¹ Johnson, S. (1993), p. 78; UNEP Training Manual (1997), p. 103; Young, O. (1994), p. 36.

¹²² Betsill, M. (2005), p. 105; Boehmer-Christiansen, S. (1996), p. 181; Carter, N. (2001), p. 233; Nilsson, S., Pitt, D. (1994), p. 11; Norman, V., Faure, M. (2004), p. 210; Sjöstedt, G., Spector, B., Zartman, W. (1994), p. 185.

¹²³ Agarwal, A., Narain, S., Sharma, A. (1999), p. 28.

3.4.3 Responsible Actors and Initial Texts

For the first time climate change was discussed at a **political conference** in June 1988, **in Toronto**. More than 340 leading scientists, policymakers and industry representatives took part in the meeting. Participants recognized that a single IGO or a state would not be able to tackle the problem of climate change alone, and that the response of the whole international community was needed.¹²⁴

After the Toronto meeting, UNEP and the World Meteorological Organization (WMO) established **the Intergovernmental Panel on Climate Change (IPCC)**.¹²⁵ The Panel was given three tasks: to synthesize and assess the state of scientific knowledge on climate change; to evaluate the environmental and socio-economic impacts of climate change; and to formulate realistic response strategies.¹²⁶

The first meeting of IPCC took place in November 1988. The Panel agreed to establish three working groups to prepare assessments of the situation regarding human-induced climate change and the formulation of response strategies. The first working group was to conduct reviews of knowledge of the science of climate change. The second group was to review programmes and conduct studies of the social and economic impacts of climate change. The third group was to develop and evaluate possible policy responses by governments to delay or mitigate the adverse impacts of climate change.¹²⁷

In September 1988, **UN GA** reflected the increasing political interest in climate change. In its **resolution 43/53**, UN GA endorsed the establishment of IPCC, and urged governments, IGOs and NGOs to promote cooperative programmes and research to increase understanding on climate change issues.¹²⁸

At **the 15th UNEP GC** in 1989,¹²⁹ UNEP GC requested UNEP's executive director in cooperation with the secretary-general of WMO, to prepare for negotiations on a convention on climate change, taking into account the work of IPCC, as well as the outcome of recent and forthcoming international meetings on the subject.¹³⁰ To meet this request, UNEP and

¹²⁴ Chasek, P. (2001), p. 125; Taylor, P. (1998), p. 9; Thomas, C. (1992), p. 177.

¹²⁵ Carter, N. (2001), p. 234; Johnson, S. (1993), p. 57; Nanda, P. (1995), p. 113; Nilsson, S., Pitt, D. (1994), p. 11; Thomas, C. (1992), p. 156.

¹²⁶ Andresen, S., Agrawala, S. (2002), p. 44; Betsill, M. (2005), p. 106; Guruswamy, L. (2003), p. 178; Sjöstedt, G., Spector, B., Zartman, W. (1994), p.188; Taylor, P. (1998), p. 9.

¹²⁷ Chasek, P. (2001), p. 125.

¹²⁸ UN GA res. 43/53.

¹²⁹ Website: UNEP, the text can be found at

<http://www.unep.org/Documents.Multilingual/Default.asp?DocumentID=71>; last entered 19-09-2006 at 11.35.

¹³⁰ 15th session of UNEP GC, Annex, 25-05-1989, *Global Climate Change*, the text can be found at

<http://www.unep.org/Documents.Multilingual/Default.asp?DocumentID=71&ArticleID=965&l=en>; last entered 03-10-2006 at 13.56.

WMO formed a Task Force consisting of representatives of both organizations and experts serving in their personal capacity. The Task Force met in June 1989, in Nairobi, to draw up possible elements for the future climate convention and plans for the negotiation process.¹³¹

At its 44th session in 1989, **UN GA** adopted **resolution 44/207**, where it stressed that the participation of developing countries in IPCC remained limited. The resolution recommended that negotiations on a framework convention should begin as soon as possible after the adoption of the interim report of IPCC.¹³²

While IPCC continued to meet during 1990, **international meetings** on climate change took place around the world. The Russian government held the Global Forum on Environment and Development in Moscow. Small island states organized a conference in the Maldives to discuss their position. Additional conferences took place in Washington DC, Nairobi, and Bergen.¹³³

It should be mentioned that there were no prior draft texts or other elaborated documents that served as a foundation for the climate change convention. This can be explained by the fact that the issue of climate change was totally new to the world.

3.4.4 The Beginning of Negotiations

After two years of research, IPCC's reports were tabled at **the Second World Climate Conference** in October 1990, in Geneva. Although there was much disagreement over the findings of IPCC, delegates decided that negotiations on a convention on climate change should be started.¹³⁴ At the same time, the heads of UNEP and WMO called for a working group of government representatives to prepare for negotiations on a framework convention. The Working Group met in September, in Geneva. It adopted several recommendations, and identified options regarding the organization of the negotiating process for a convention. These recommendations and options were submitted to UN GA for consideration.¹³⁵

At its 45th session in December 1990, basing on the recommendations of IPCC, **UN GA** adopted **resolution 45/212**, which urged governments, IGOs, and NGOs to collaborate with the purpose to combat climate change and its negative effects.¹³⁶ The resolution established a single intergovernmental negotiating process, which was to be conducted by the Intergovernmental Negotiation Committee for a Convention on Climate Change (INC*). INC*

¹³¹ Chasek, P. (2001), p. 125.

¹³² UN GA res. 44/207.

¹³³ Thomas, C. (1992), pp. 179-180.

¹³⁴ Agarwal, A., Narain, S., Sharma, A. (1999), p. 24; Boehmer-Christiansen, S. (1996), p. 181.

¹³⁵ Chasek, P. (2001), p. 126.

¹³⁶ UN GA res. 45/212; Boehmer-Christiansen, S. (1996), p. 184.

was placed under the control of GA, supported by UNEP and WMO. INC* was open to all member states and specialized agencies of UN, as well as for other observers.¹³⁷ In such a way, GA took control over the negotiating process away from UNEP and WMO. The climate issue was to be negotiated as a part of the wider preparation to UNCED.

Resolution 45/212 charged INC* with the task to prepare an effective framework convention on climate change, which should be completed prior to UNCED, and opened for signature there. This mandate left open a fundamental question that ran throughout the negotiations: was the task of INC* to draft a framework convention of general principles and obligations, or a substantive convention committing states to specific measures and policies?¹³⁸

The first negotiating session of INC* took place in February 1991, in Washington. Delegates from more than 100 states, with a large number of observers from IGOs and NGOs, arrived at the meeting. The session focused largely on organization and procedure, including the formation of working groups, and approval of special efforts to encourage participation of developing countries.¹³⁹

It became evident that different interests existed not only among developed and developing states, but also within each of these groups. There was a basic conflict between those, who wanted no more than a framework convention and others, who wanted a convention with firm commitments. Many countries viewed the framework convention/protocol model as unnecessary slow, taking into consideration the urgency of the climate change problem and the extensive preparatory work of IPCC.¹⁴⁰

Developing countries split into three camps. Small island states, which might disappear in the event of sea level rise and minor greenhouse gas emitters, were in favour of a strong convention (Nauru, Vanuatu and some of the African nations). Major greenhouse gas emitters saw climate change as a long-term threat, were willing to negotiate on it, but did not want to limit their own economic growth (China, India, Brazil). Oil exporting countries (Saudi Arabia, Kuwait) thought that efforts to cut greenhouse emissions would damage their economies.¹⁴¹

Developed countries were also split. UK opposed a fiscal instrument (such as an energy tax) to achieve the necessary carbon cuts equitably. France departed from the common European position by talking about carbon cuts based on per capita calculations, a similar formula to the position adopted

¹³⁷ *Ibid*; Johnson, S. (1993), p. 57; Nilsson, S., Pitt, D. (1994), p. 15; Richardson, E. (1992), p., 171; Sjöstedt, G., Spector, B., Zartman, W. (1994), p. 183.

¹³⁸ UNEP Training Manual (1997), p. 104.

¹³⁹ Chasek, P. (2001), p. 127; Young, O. (1994), p. 35.

¹⁴⁰ UNEP Training Manual (1997), p. 104.

¹⁴¹ Birnie, P., Boyle, A. (2002), p. 523; Johnson, S. (1993), p. 57; Thomas, C. (1992), pp. 186 - 187.

by Japan. Switzerland and Austria were committed to firm policies to reduce carbon dioxide emissions from traffic and other sources. Nordic countries, which were usually among environmental leaders, refused to commit themselves to measures to achieve a freeze on gas by 2000.¹⁴²

In 1991, **GEF** was established as a joint programme between UNDP, UNEP and WB. The task of GEF became to provide funding to help less developed countries implement measures to protect the global environment. GEF got four priority areas: protection of biological diversity, reduction of greenhouse gases, protection of international waters, and protection of ozone layer.¹⁴³

3.4.5 Negotiations in Full Speed

The second session of INC* was organized in June 1991, in Geneva. There were more than 120 states and an increased number of NGOs present there. Some countries, including UK, India, Vanuatu, France and New Zealand, circulated informal draft texts. After much debate, the delegates agreed to establish two working groups. Working Group I was to focus on principles, commitments, technology transfer, and financial resources. Working Group II was to deal with legal and institutional issues, scientific cooperation, monitoring, information, and mechanisms for the transfer of financial resources and technology.¹⁴⁴ The desire for a more elaborated convention than a framework convention manifested itself in both working groups.¹⁴⁵

Developing countries insisted on the establishment of a climate fund. The majority of developed countries suggested that GEF should be used for this purpose. Being under the management of WB, GEF had the capacity of concentrating funding for all major environmental problems in one place. Developing states rejected this alternative. Perhaps they did not appreciate that GEF would depend on voluntary contributions from developed countries, unlike the proposed climate fund, where contributions were planned to be compulsory.¹⁴⁶

It was proposed separately by UK and Japan that, instead of a quantified target on reduction of greenhouse gas emissions, states should commit themselves to a process. They would establish their own greenhouse gas limitations strategies, but would submit those strategies for regular review by other parties to the treaty. India, China, and many NGOs rejected this idea. Nevertheless, it became a mainstream of the negotiation.¹⁴⁷

Discussions based on a negotiating text began at **the third session of INC*** in September 1991. Delegates explored each other's positions and began to

¹⁴² Chasek, P. (2001), p. 127.

¹⁴³ Carter, N. (2001), p. 234.

¹⁴⁴ Nilsson, S., Pitt, D. (1994), p. 16.

¹⁴⁵ UNEP Training Manual (1997), p. 104.

¹⁴⁶ Chasek, P. (2001), p. 128.

¹⁴⁷ *Ibid.*

draft specific provisions. North-South differences emerged on matters relating to financial sources and technology, research priorities, information exchange, institutions and the role of NGOs. Financial mechanisms and the role of GEF were extremely debatable issues. Developed countries supported GEF, which could use existing expertise at UNDP, UNEP and WB. India and China preferred to establish a new institution.¹⁴⁸

At **the fourth session of INC*** in December 1991, delegates moved from general discussions to debate on specific wording. There was broad support for the concept of “common but differentiated responsibilities”. This meant that all countries must be involved in global warming strategies, though their approaches would vary considerably, depending on their responsibility for emitting greenhouse gases, their vulnerability to the impacts of climate change, and their economic status. When the proposal supported by almost all countries was made, that carbon dioxide emissions of developed countries should be stabilized at 1990 levels by the year 2000, US, supported by Saudi Arabia and Kuwait, opposed it.¹⁴⁹

By the end of the fourth session, INC* combined various texts from the two working groups into one “Consolidated Working Document”, which was still characterised by wide differences among the negotiating parties.¹⁵⁰

The fifth session of INC* was organized in February 1992, in New York. This was expected to be the last session of INC*. However, much of the interest of participants was concentrated not on the planned discussion, but on private meetings, where OECD unsuccessfully tried to sort out its position on greenhouse gas targets. The situation was getting more disappointing as the gap between US and other OECD countries remained wide. For the first time it became apparent that either there would be no convention ready for UNCED or it would be a framework convention for which a minority of delegates had argued throughout. INC* decided to resume the fifth session for additional 9 days from 30 April to 8 May 1992 to finish the convention.¹⁵¹

There was much international and domestic pressure to complete the convention in time for UNCED. This forced the participants to search a compromise on the carbon dioxide target issue. Jean Ripert, the chair of INC*, used a private meeting of key negotiators, and subsequent bilateral contacts, to identify generally acceptable compromises on the issues that had hampered the negotiations. At the meeting of key negotiators, J. Ripert was asked to develop his own compromise text for the final meeting. Without much enthusiasm, the chair of INC* agreed. This was a move that most participants believed became crucial to the ultimate success of the negotiations.¹⁵²

¹⁴⁸ *Ibid.*

¹⁴⁹ *Ibid.*, p. 129.

¹⁵⁰ Agarwal, A., Narain, S., Sharma, A. (1999), p. 38.

¹⁵¹ Chasek, P. (2001), p. 130.

¹⁵² *Ibid.*

3.4.6 Closing Negotiations

The fifth resumed session of INC* took place on 30 April 1992, in New York. J. Ripert's draft text helped to focus the discussion on the specific details of the convention that still remained to be resolved. The critical issues included targets and timetables for stabilizing carbon dioxide emissions, financing the convention, and specific commitments to be made by industrialized countries. INC* abandoned its working group structure and divided itself into three groups to consider various clusters of articles.¹⁵³

These groups met informally and worked line-by-line through the text. When the three groups were ready with their tasks, J. Ripert reconstructed INC* into one group. The only remaining problem was art. 11 on financing. Developed countries wanted to designate GEF as the financial mechanism. Developing countries argued either to create a separate fund or to leave the issue to the Conference of the Parties.¹⁵⁴

After two days of informal consultations, the financial mechanism matter was not resolved. The delegates agreed to leave this issue to the first Conference of the Parties. As an interim measure, they allowed GEF to operate the fund until other provisions were made. On the subject of commitments, J. Ripert proposed an ongoing review process without setting firm targets and timetables.¹⁵⁵

The final draft text was called "non-negotiable", since US was unwilling to accept anything else. The negotiators were pressed to hastily agree on a compromise text, because the convention was to be ready for UNCED. Consequently, the Framework Convention on Climate Change was adopted on 9 May 1992, in New York. It was opened for signature on 4 June 1992. On 21 December 1993, the Convention received its 50th instrument of ratification and entered into force on 21 March 1994.

3.4.7 Subsequent Documents

Further strengthening of the Convention on Climate Change occurred in 1997, when the Kyoto Protocol was adopted. This protocol defines three innovative "flexibility mechanisms" to lower the overall costs of achieving its emission targets. Such mechanisms enable state parties to access cost-effective opportunities to reduce emissions or to remove carbon from the atmosphere in other countries.¹⁵⁶

¹⁵³ *Ibid.*

¹⁵⁴ *Ibid.*, p. 131.

¹⁵⁵ *Ibid.*

¹⁵⁶ Website: the Climate Change Convention, the text can be found at http://unfccc.int/kyoto_mechanisms/items/1673.php; last entered 19-10-2006 at 21.27.

3.4.8 Conclusions

The growth of the climate change regime is characterized by the elaboration of the Convention on Climate Change. It is clearly marked in the title of this treaty that it is a framework convention. There were no prior documents, which served as a foundation for the convention, perhaps because the notion of climate change was new to the world. The whole international community was interested in solving the climate change issue. The first actors that started work on the future convention were UNEP, WMO, and later UN GA. UNEP and WMO established IPCC. Later UN GA established INC* as a single negotiating process, and actually took control over the negotiations away from UNEP and WMO. In 1991, GEF was established as a joint programme between UNDP, UNEP and WB. The task of GEF became to provide funding.

There were confrontations throughout the negotiations, not only among developed and developing states, but also within each of these groups. Disagreements concerned such questions as how detailed the convention should be, financial mechanisms, the role of GEF, and greenhouse gas targets. J. Ripert, the chair of INC*, was the person that contributed much to the successful adoption of the convention. Several meetings of IPCC, 6 sessions of INC and numerous private meetings became necessary to complete the negotiations. The convention entered into force 1 year and 9,5 months after its opening for signature, when it had been ratified by 50 parties. Strengthening of the Convention on Climate Change occurred in 1997, when the Kyoto Protocol was adopted.

3.5 Summarizing the Results from the Case Studies

In this chapter, I have studied three examples, which illustrate the growth of three international environmental regimes - the hazardous waste regime, the global biodiversity regime, and the climate change regime. I have presented and elaborated the material about international work and negotiations on the Basel Convention, the Convention on Biodiversity, and the Convention on Climate Change. I have regarded this work as initial steps in the process of the regimes' growth. I have summarized the most important conclusions about the formation of each regime. In the next chapter, I am going to analyse the results from my case studies, using the material from the theoretical part of my work.

4 Analysis

In this chapter, I am going to compare, analyse and discuss the growth of the hazardous waste regime, the global biodiversity regime, and the climate change regime. I shall use the results from my empirical and theoretical parts. I shall consider the work and negotiations on the binding conventions, which are very important parts of the regimes, as the initial steps in the process of the development of regimes. I shall also make several tables, which will illustrate the results of my work.

4.1 The Comparison of the Formal Aspects of the Conventions

In this section, I would like to compare the formal aspects of the three conventions. I shall draw a table, which will point up the similarities and differences I have found. The table will consist of ten aspects for comparison, which will be placed vertically. The aspects for comparison will include such variables as the dates of adoption, opening for signature and entrance into force, as well as the number of states that ratified the conventions on the day of their opening to signature and the number of state parties today. Horizontally I shall divide the material into five sections, which will be the number of the aspect for comparison, the name of the aspect for comparison, and the name of the respectively convention.

I shall start with the comparison of **the type of the convention**. This comparison shows that the Basel Convention is “harder” in its substance than the Convention on Biodiversity and the Convention on Climate Change. The Convention on Climate Change is directly titled a framework convention. The Convention on Biodiversity lacks such a word in its title, but according to its content, it is a framework convention.¹⁵⁷ The feature of being a framework convention puts the Convention on Biodiversity and the Convention on Climate Change rather into the category of soft law, than into “hard” law.¹⁵⁸

The Basel Convention required 20 **ratification instruments** in order to enter into force, the Convention on Biodiversity – 30, and the Convention on Climate Change - 50.¹⁵⁹ These figures might reflect that those who elaborated the conventions realized that it would take approximately the same effort to collect 20 ratification instruments for the Basel Convention, as 30 ratifications for the Biodiversity Convention, and 50 – for the Convention on Climate Change. The choice of the number of ratification instruments can depend on different factors. However, it is easier to get ratifications for a treaty that does not appose many binding obligations on

¹⁵⁷ Compare with section 3.3.8 Chapter III.

¹⁵⁸ Compare with section 2.5 Chapter II.

¹⁵⁹ See variable 6 in Table 1.

its parties, but instead formulates general goals and principles.¹⁶⁰ I can conclude that, judging from the number of ratifications required, the Convention on Climate Change is more general in character than the Convention on Biodiversity, and that the Convention on Biodiversity is more general than the Basel Convention.

This conclusion may be strengthened by the fact that the Basel Convention was **directly signed** only by 36 states, while the Convention on Biodiversity and the Convention on Climate Change were directly signed by more than 150 states. **Today** the Basel Convention has 168 **state parties**, the Convention on Biodiversity – 188, and the Convention on Climate Change – 189. Usually it is not easy to get the signature of so many states, because states have different interests, and do not want to give away their sovereignty by binding themselves to international obligations.

The high figures of the direct signature and the number of state parties in the case of the Convention on Biodiversity and the Convention on Climate Change can be explained by the bio-physical factor.¹⁶¹ It can be said that the danger of a possible environmental disaster pressed states to collaborate and to submit to the obligations expressed in these conventions. This factor was surely taken into consideration by the states that became parties to the conventions, but, knowing how difficult it had been to reach consensus during the negotiations, I doubt that the bio-physical factor had much significance. I believe that there were other factors that influenced the signature process, and first of all that the Convention on Climate Change and the Convention on Biodiversity did not require decisive commitments from their state parties. Once again, I would like to emphasize, that the Convention on Climate Change and the Convention on Biodiversity do not appose such firm obligations on their parties as the Basel Convention does.

The time from opening for signature to entrance into force is about 3 years and 1,5 months for the Basel Convention, 1 year and 6,5 months for the Convention on Biodiversity, and 1 year and 9,5 months for the Convention on Climate Change. Thus, the time required for the Basel Convention to enter into force is longer than for other two conventions. This can be an indication that states were not willing to accept the obligations expressed in the Basel Convention, perhaps because these obligations required much more commitment from their parties than the Convention on Biodiversity and the Convention on Climate Change.

All the three conventions have **further protocols** that strengthen their obligations. In the case of the Basel Convention, there are two documents, the Ban Amendment, and the Basel Protocol on Liability and Compensation. In the case of the Convention on Biodiversity, there is the Cartagena Protocol, and for the Convention on Climate Change, it is the Kyoto Protocol that is relevant. The fact that these protocols became necessary shows that the conventions could not solve the environmental

¹⁶⁰ Compare with section 2.5 Chapter II.

¹⁶¹ Concerning the significance of bio-physical factors see section 2.1 Chapter II.

Table 1: Comparison between the Formal Aspects of the Conventions. The variables “the main issue of the convention” and “the date of adoption” are mainly provided to give the reader a general understanding of the formal aspects of the conventions.

N	Aspects for Comparison	The 1989 Basel Convention	The 1992 Convention on Biodiversity	The 1992 Convention on Climate Change
1	The type of the convention	A multilateral convention; the issue of the exporting state liability left for a future protocol	Has the character of a framework convention	A framework convention
2	The main issue of the convention	The control of the movement of hazardous wastes and other wastes across international frontiers (art. 1, 4)	The conservation of biological diversity, the sustainable use of its components, and the fair sharing of the benefits arising out of the utilization of genetic resources (art.1)	The stabilisation of greenhouse gas concentrations at levels, which would prevent dangerous anthropogenic interference with the climate system (art. 2)
3	The date of adoption	22-03-1989	22-05-1992	09-05-1992
4	The date of opening for signature	22-03-1989	05-06-1992	04-06-1992
5	The number of states that signed the convention directly	36	More than 150	More than 150
6	The number of ratification instruments, required for the convention to enter into force	20 (art. 25)	30 (art. 36)	50 (art. 23)
7	The date of entrance into force	05-05-1992	29-12-1993	21-03-1994
8	The time from opening for signature to entrance into force	3 years and 1,5 months	1 year and 6,5 months	1 year and 9,5 months
9	The number of state parties today	168	188	189
10	Further documents that strengthen the convention	The 1995 Ban Amendment; the 1999 Basel Protocol on Liability and Compensation	The 2000 Cartagena Protocol on Biosafety	The 1997 Kyoto Protocol

problems they were aimed to solve. The subsequent protocols also illustrate how the hazardous waste regime, the global biodiversity regime, and the climate change regime continue to develop in order to meet the requirements of the environment.

By the analysis fulfilled in this section, I would like to stress that when we deal with a multilateral convention, we should not be impressed by the number of states that signed the convention immediately, or by the number of state parties to the convention today. Short time from opening for signature to entrance into force does not reflect the usefulness of the convention either. The high figures of almost universal signature of a convention and the desire of states to become parties to it may quite surprisingly mean that the content of the convention is rather weak, and it does not contain more than general goals and principles. As a consequence, it may mean that the convention does not address the environmental problem in the way the problem should be addressed.

4.2 The Comparison of the Negotiating Process

In this section, I would like to compare the negotiating processes of the three conventions. I shall draw a table, which will show special features of each process. The table will consist of six aspects for comparison, which will be placed vertically. These aspects will include such variables as the time when the work on the environmental problem started, main disagreements during the negotiations, working sessions necessary to complete the negotiations, and some others. Horizontally I shall divide the material into five sections, which will be the number of the aspect for comparison, the name of the aspect for comparison, and the names of the respectively convention.

I shall start the table presenting **the environmental problems** that led to the development of the conventions. I shall continue specifying **the time when the work on these problems started**. Thus, the issue of shipping hazardous wastes to developing countries drew political attention in the early 1980s. This was the time, when early thoughts about the elaboration of the Basel Convention began to appear. I think that this was the first step, when the elaboration of the hazardous waste regime began.

The elaboration of an international convention that would address the irreversible loss of individual species caused by human activity was suggested in 1987. This was also the time, when the elaboration of the global biodiversity regime began, because the work on this regime is characterized by the work on the Convention on Biodiversity. The issue of climate change became urgent on the political agenda in 1988. It was the period, when first steps were taken towards the Convention on Climate Change. By the analogy with the previously mentioned conventions, I

assume that 1988 was also the time when the elaboration of the climate change regime started.

The time from the beginning of the work on the environmental problem to the date of opening for signature of the relevant convention, is about eight years for the Basel Convention, five years for the Convention on Biodiversity, and four years for the Convention on Climate Change. I do not think that these years reflect the effectiveness of the work on the conventions. The fact that only four years were needed to prepare the Convention on Climate Change for signature, does not necessarily mean that the work on this treaty was more effective than the work on the Basel Convention, where eight years were required. It does not mean that the Convention on Climate Change is an example of successful negotiations either, because, judging from my case study, it was not. Like in the previous section, I would like to underline that a short period from the beginning of the work on the environmental problem, to the date, when the relevant convention is opened for signature, may mean that this convention does not contain many binding obligations on its parties, and that is why it has taken less time to negotiate it.

Another aspect that is relevant for the explanation of the short period it took to prepare the Convention on Climate Change might be the fact that the international community understood the problem of climate change as an environmental danger that must be prevented as soon as possible. That is why the elaboration of the convention did not take much time.

It is interesting to find out that the Basel Convention and the Convention on Biodiversity had **prior documents**, which served as starting points for the future conventions. In the case of the Basel Convention, there were the Cairo Guidelines, and documents from OECD and EC. The fact that there were different documents from three IGOs, shows to me that the problem of hazardous waste shipment was regarded as really serious by the world community, though there was no single leadership in this question. Such a situation depicts possibly the specifics of the international environmental law, which does not have a supreme body that would serve environmental protection.¹⁶²

The Convention on Biodiversity originated from a document of IUCN on the *in situ* conservation of biodiversity. The Convention on Climate Change did not have any prior document. This can be explained by the fact that the climate change issue was totally new to the world. There existed no documents that were dealing with this problem.

There were many **disagreements during the negotiations** of the Basel Convention. The most prominent conflicts were between developed countries and African States, mainly because African States wanted a total ban on waste exports as well as export-state liability in the event of illegal

¹⁶² Compare with section 2.1 Chapter II.

traffic in wastes. Besides, there were continuous discussions about how detailed the convention should be. The Convention on Biodiversity was also characterized by disagreements between the North and the South. Critical issues, where it was difficult to compromise, were whether biotechnology should be included, whether access to expertise in biotechnology should be given to developing countries, and about the financial mechanism for the convention.

In general, disagreements between the North and the South are typical for international negotiations, because the North and the South, i.e. developed and developing countries have different interests to preserve. In the case of the Basel Convention, the North – South confrontation had a special feature. It was mainly a confrontation between the North and African countries. During the negotiations of the Convention on Biological Diversity, this confrontation had the classical North – South character. During the elaboration of the Convention on Climate Change, the situation became peculiar: there were different views not only among developed and developing states, but also within each of these groups. Major issues of disagreements concerned the questions how detailed the convention should be, financial mechanisms, the role of GEF, and greenhouse gas targets.

Now I would like to discuss **the number of working sessions**, which became necessary to fulfil the negotiations of the three conventions. I realize that in my essay I do not mention all the sessions that were held. I name only those, which were described in the reference material I found. I do not count private meetings that took place during the negotiations. It is possible that the number of working sessions I present is lower than the number of sessions arranged in practice.

The number of working sessions for the negotiations of the Basel Convention and the Convention on Climate Change was approximately the same. For the Basel Convention, six meetings of the Working Group of Legal and Technical Experts became necessary, as well as informal consultations conducted by M. Tolba. For the Convention on Climate Change, several meetings of IPCC, six sessions of INC*, and private meetings were needed. The Convention on Biodiversity required the largest number of working sessions, which included a meeting of senior advisers, three meetings of the Working Group of Experts on Biological Diversity, seven meetings of the Working Group of Legal and Technical Experts (later renamed into INC). I do not have any information about private meetings, which were organized during the negotiations of the Convention on Biodiversity, but I think that they definitely took place.

The negotiations of the Convention on Biodiversity and the Convention on Climate Change were hastened by the **approach of UNCED**. The negotiations of the Basel Convention were influenced by the coming Conference of the Plenipotentiaries, though this conference was a minor international event in comparison to UNCED. I think that these conferences were the crucial reasons why the conventions became prepared, as it had

Table 2: Comparison of the Negotiating Process and the Position of the Conventions in Their Regimes

N	Aspects for Comparison	The 1989 Basel Convention	The 1992 Convention on Biodiversity	The 1992 Convention on Climate Change
1	The environmental problem that led to the development of the convention	Shipping hazardous wastes from developed countries to developing countries and to Eastern Europe	Irreversible loss of individual species as the result of human activity	Increasing greenhouse gas concentrations, which lead to the rise in the surface temperature; this will cause dramatic weather changes
2	Time when the work on the environmental problem started	The early 1980s	1987	1988
3	Time from the beginning of the work on the environmental problem, to the date when the convention was opened for signature	About 8 years	About 5 years	About 4 years
4	Texts, which served as the foundation for the future convention	The Cairo Guidelines, and documents from OECD and EC	A document from IUCN on the <i>in situ</i> conservation of biodiversity	No prior texts; the climate change issue was new to the world
5	Main disagreements during the negotiations	<ul style="list-style-type: none"> - Between developed countries and African States. The latter wanted a total ban on waste exports and the export-state liability in the event of illegal traffic in wastes; - how detailed the convention should be 	<p>The North – South confrontation:</p> <ul style="list-style-type: none"> - whether biotechnology should be included; - whether access to expertise in biotechnology should be given to developing countries; - about the financial mechanism for the convention 	<p>Different views not only among developed and developing states, but also within each of these groups. Critical issues:</p> <ul style="list-style-type: none"> - how detailed the convention should be; - financial mechanisms and the role of GEF; - greenhouse gas targets
6	Working sessions, which became necessary to complete the negotiations	6 meetings of the Working Group of Legal and Technical Experts; informal consultations conducted by M. Tolba	A meeting of senior advisers; 3 meetings of the Working Group of Experts on Biological Diversity; 7 meetings of the Working Group of Legal and Technical Experts (later renamed into INC); private meetings	Several meetings of IPCC; 6 sessions of INC*; private meetings

been planned. Because the conventions were to be opened for signature during the conferences, the negotiators did not include conflict issues into the texts of the conventions, only for the conventions to be ready in time.

It is a pity to realize, that perhaps the texts of the conventions could have imposed more obligations on state parties. On the other hand, knowing how difficult it was to negotiate, I think that it is already a success to adopt such a global convention, as for example the Convention on Climate Change, without analysing how “hard” its substance is. It is always possible to regard a convention as a punctuation mark in the negotiating process.¹⁶³

In this section, I have compared and analysed the negotiating processes of the three chosen conventions. There was a general pattern, which was similar to the elaboration of the three conventions. It took from four to eight years from the beginning of the work on the environmental issue, to the date when the conventions were opened for signature. Usually the conventions had some prior documents that served as a foundation for the future agreements. Main conflicts during the negotiations were between the North and the South, though these groups were not always homogeneous. Repeating conflict issues were about the financial mechanisms and how detailed the future convention should be. More than six official working sessions and private meetings became necessary to fulfil the negotiations. The approach of significant international conferences urged the elaboration of the conventions.

In general, short time from the beginning of the work on the environmental problem, to the date when the relevant convention is opened for signature, does not automatically mean that the convention has been the success of negotiations. Short time may on the contrary indicate that the substance of the convention is weak, and, if it had been negotiated more, it could have been more precise and detailed. Besides, the urgency and difficulty of an environmental problem may quicken the international response to it in the form of a binding treaty.

4.3 The Comparison of the Actors that Were Active During the Negotiations

In this section, I am going to compare and analyse actors that were active during the negotiations of the chosen conventions. I shall draw a table, which will illustrate actors distinguishing for each convention. The table will consist of four aspects for comparison, which will be placed vertically. The aspects for comparison will include such variables as actors that initiated the creation of the conventions, IGOs that played central and significant roles during the work on the conventions, and individuals that played key roles during the negotiations. Horizontally I shall divide the material into five sections, which will be the number of the aspect for

¹⁶³ Compare with section 3.4.1 Chapter III.

comparison, the name of the aspect for comparison, and the names of the respectively convention.

I shall start with the comparison of **actors that initiated the creation of the conventions**. The work on the issue of hazardous waste movement, which led to the development of the Basel Convention, was started by three IGOs - UNEP in its Montevideo Programme and Cairo Guidelines, OECD in its guidelines for the export and import of hazardous wastes, and EC in its documents about transfrontier shipments of hazardous wastes. The idea of a universal biodiversity convention was proposed by US at the 14th UNEP GC. The Convention on Climate Change did not have any separate actor that pushed its development. My impression is that the world community reacted jointly. After the Toronto conference, UNEP and WMO took the initiative to elaborate a convention on climate change. Later UN GA took away the control over the work on the convention.

The Working Group of Legal and Technical Experts established by UNEP and UNEP itself, played **the central role during the elaboration** of the Basel Convention. The Working Group of Experts on Biological Diversity, and the Working Group of Legal and Technical Experts, later renamed into INC, both under UNEP's control; and UNEP itself, played the most essential roles during the work on the Convention on Biodiversity. The Convention on Climate Change was characterised by the work of IPCC, which was under UNEP and WMO's control; INC*, under UN GA's control; and GEF, which was a joint programme between UNDP, UNEP and WB. UNEP, WMO and UN GA were the central actors on the work on the Convention on Climate Change as well. It is worth emphasizing that all the actors named in this paragraph, except US, were IGOs. Only US represented a traditional actor of international law, i.e. a state.

Among **other IGOs, significant for the development of the conventions**, I can mention OECD, EC, and OAU for the Basel Convention, as well as OECD, and some scientific IGOs for the Convention on Climate Change. My investigation does not show, what other IGOs except UNEP participated in the elaboration of the Convention on Biodiversity.

In Chapter II, I have underlined that there are **individuals**, who actually make decisions and act in IGOs.¹⁶⁴ Chapter III has also shown that individuals stand behind negotiating process and answer for the success of negotiations. Thus, M. Tolba, UNEP's executive director, played a key role during the negotiations of the Basel Convention. He and V. Sanchez, INC's chair, were the central persons during the negotiations of the Convention on Biodiversity. J. Ripert, the chair of INC*, played an indispensable role in the negotiations on the Convention on Climate Change. I realize that there might be other individuals, whose work was essential for the elaboration of the conventions, but their names do not appear from my investigation.

¹⁶⁴ See section 2.4 Chapter II.

Table 3: Comparison of the Actors that Were Active During the Negotiations of the Conventions

N	Aspects for Comparison	The 1989 Basel Convention	The 1992 Convention on Biodiversity	The 1992 Convention on Climate Change
1	Actors that initiated the creation of the convention	- UNEP in its Montevideo Programme and Cairo Guidelines; - OECD in its guidelines for the export and import of hazardous wastes; - EC in its documents about transfrontier shipments of hazardous wastes	US at the 14 th UNEP GC	The whole world community was eager to solve the problem; the initiative was taken by UNEP and WMO, then by UN GA
2	IGOs that played the central role during the work on the convention	UNEP, the Working Group of Legal and Technical Experts under UNEP's control	UNEP, the Working Group of Experts on Biological Diversity, and the Working Group of Legal and Technical Experts (the latter renamed into INC), both under UNEP's control	UNEP, WMO, UN IPCC, INC*, and GEF. IPCC was under UNEP and WMO's control. INC* was under UN GA's control. GEF was a joint programme between UNDP, UNEP and WB
3	Other IGOs, which were significant for the development of the convention	OECD, EC, OAU	--- My investigation does not show it	OECD, other scientific IGOs
4	Individuals that played key roles during the negotiations	M. Tolba, UNEP's executive director	M. Tolba, UNEP's executive director; V. Sanchez, INC's chair	J. Ripert, the chair of INC*

In this section, I have compared and discussed the actors that were active during the negotiations of the chosen conventions. I have come to the conclusion that there were IGOs, not states, that played the most important roles in the elaboration of the conventions. In two cases out of three, IGOs took the initiative to begin the work on the future conventions. This conclusion corresponds to the interdependence approach, which views international organizations as more than the sum of their members.¹⁶⁵ The conclusion indicates that IGOs, and not states, provide political and juridical leadership in international environmental law.

¹⁶⁵ Compare with section 2.4 Chapter II.

M. Tolba, UNEP's executive director, was a very important person during the negotiations of the Basel Convention and the Convention on Biodiversity. It is peculiar that the success of the negotiations of the two global conventions depended on the activity of one person. The work of the chairs of INC and INC* was also very important.

It should be underlined that UNEP and OECD used soft law as a starting point for the elaboration of the Basel Convention. UNEP's Montevideo Programme and Cairo Guidelines, as well as OECD's guidelines for the export and import of hazardous wastes were soft law instruments that saw many of their provisions incorporated into the Basel Convention.

4.4 Other Treaties in the Relevant Areas of International Environmental Law

In this section, I shall outline other treaties, which exist in the same areas of international environmental law, as the three conventions chosen for the comparison. I shall discuss whether these treaties are parts of the respectively hazardous waste regime, the global biodiversity regime and the climate change regime.

The Rotterdam Convention,¹⁶⁶ and some regional agreements, such as the Bamako Convention on the Ban of the Import into Africa and the Control of Transboundary Movement and Management of Hazardous Wastes within Africa are other international treaties that exist in the field of hazardous wastes movements. The Convention on International Trade in Endangered Species of Wild Fauna and Flora, the Bonn Convention on the Conservation of Migratory Species of Wild Animals, and the Ramsar Convention on Wetlands, are those treaties that deal with the issue of biodiversity loss caused by human activity. The Vienna Convention for the Protection of the Ozone Layer, and the Montreal Protocol on Substances that Deplete the Ozone Layer address the problem of atmospheric pollution.

It can be discussed whether the above mentioned treaties are parts to any of the three regimes described in my essay.¹⁶⁷ The Vienna Convention and the Montreal Protocol do not belong to the climate change regime. They create a separate ozone regime, which is aimed to protect stratospheric ozone from human-made chemicals. The Convention on International Trade in Endangered Species, the Bonn Convention, and the Ramsar Convention may be included into the global biodiversity regime in its broader meaning, because they regulate some special cases of biodiversity protection.

It is debatable whether the Rotterdam Convention, and regional agreements, such as the Bamako Convention, can be included into the hazardous waste regime. The author, whose opinion about the regime components I

¹⁶⁶ The Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade.

¹⁶⁷ For example, see section 2.2 Chapter II.

presented in Chapter II,¹⁶⁸ does not include the Rotterdam and the Bamako Conventions into the hazardous waste regime. I suppose that, as in the case of the global biodiversity regime, the Rotterdam and the Bamako conventions can be treated as a part of the hazardous waste regime, though they address some special cases of the hazardous waste problem. The Rotterdam Convention regulates the trade of hazardous chemicals and pesticides, while the Bamako Convention is a regional convention, which deals with the ban of the import into Africa and the control of transboundary movement and management of hazardous wastes within Africa. The Bamako Convention can be seen as a good example of the further development of the hazardous waste regime.

To generalize the conclusions from this section, I can summarize that environmental regimes can be probably understood in their narrow and broad meaning. In their narrow meaning, regimes include principles, norms, rules, decision-making procedures, and institutions connected only with one global treaty. This is well seen in the case of the climate change regime, where everything is connected with the Convention on Climate Change. In their broad meaning, regimes can include even principles, norms, rules, decision-making procedures, and institutions connected with other treaties, which might have a special or local character. This can be exemplified by the global biodiversity regime, which may include the Bonn, and the Ramsar Conventions that deal with special cases of the biodiversity issue.

4.5 Summarizing the Results of the Analysis

In this chapter, I have compared, analysed and discussed the growth of the hazardous waste regime, the global biodiversity regime, and the climate change regime. I have considered the elaboration of the Basel Convention, the Biodiversity Convention, and the Climate Change Convention as the initial steps in the elaboration of the chosen regimes. I have come to a number of interesting conclusions.

Firstly, when we deal with a multilateral convention, we should not be impressed by the number of state parties that the convention has. The short time from opening for signature to entrance into force does not reflect the value of the convention either. The high figures of almost universal signature of a convention and the desire of states to become parties to it, may quite surprisingly mean that the content of the convention is weak.

Secondly, the number of ratifications required for a convention to enter into force, may reflect how “hard” the substance of the convention is. The less the number of the required ratifications is, the more obligations the convention might appose on its state parties. A small number of states that signed the conventions immediately, and a long time from the convention’s

¹⁶⁸ Compare with the opinion of Downie, D. in section 2.2 Chapter II.

opening for signature to entrance into force, may mean the same thing. To continue this idea, a short time from the beginning of the work on an environmental issue to the date of the convention's opening for signature, does not necessarily mean the success of international negotiations. It may indicate that the convention is weak in its substance, and that is why it took less time to negotiate it.

Thirdly, the three conventions have further protocols that strengthen their obligations. These protocols became necessary, because the conventions could not solve the environmental problems they were aimed to solve. The subsequent protocols illustrate how it is possible to develop environmental regimes further.

I think that the model "a convention of a framework work character plus following protocols" is an effective one, when we deal with the elaboration of environmental regimes. It is easier to negotiate and adopt a convention that does not appose too many obligations on its parties. When such a convention enters into force, it starts to influence the behaviour of states anyway. It is better that a new convention enters into force as soon as possible, than to wait additional years for a more precise version to be adopted. It is also uncertain, whether another negotiating period will result in a more detailed convention. Later, a convention that contains many general provisions may be strengthened by one or few protocols. It will be easier to negotiate protocols, for example because of fewer issues that should be agreed upon. Besides, states will have an opportunity to choose, if they want to be parties to these protocols, or just remain parties to the main convention.

Fourthly, main disagreements during the negotiations of the three conventions were between the North and the South, though the North and the South groups were not always homogeneous. The repeating conflict issues concerned the financial mechanisms and how detailed the future convention should be.

Fifthly, international conferences, where it was planned to open the conventions for signature, were the major reasons why the conventions became ready in time. When the parties did not have more time for negotiations, they simply did not include conflict issues into the conventions. From my point of view, this is not the tactics we are awaiting from political leaders. Perhaps a better planning of the negotiation process was required in all three cases.

Sixthly, IGOs, and not states, played the central roles in the elaboration of the conventions. In the majority of cases, IGOs took the initiative to begin the work on the future conventions. This shows that IGOs provide essential political and juridical leadership in the creation of environmental regimes. It also shows that the role of IGOs in international environmental law has dramatically increased today.

Seventhly, the role of individuals in the elaboration of environmental conventions should not be underestimated. Personal involvement of Misters Tolba M., Sanchez V. and Ripert J. into the work on the conventions, contributed much to the accomplishment of negotiations.

Eighthly, environmental regimes can be viewed in their narrow and broad meanings. In their narrow meaning, regimes are concentrated only around one global treaty. In their broad meaning, regimes can include elements connected with other treaties that might have a special or local character.

In general, I do not suppose that those who start to elaborate a global convention have the goal to elaborate an environmental regime. Rather there is a goal to elaborate a convention. We begin to talk about the development of regimes later, somewhere after the relevant convention is adopted. At that point it is also well seen, whether future supplementary protocols would be needed.

5 Final Conclusions

In this essay, I have emphasized that international environmental law has a special character. Environmental regimes, soft law, and IGOs play an essential role in its creation and development. I have introduced the term “regimes” into the theory of international environmental law. I think that an environmental regime can be understood as a combination of traditional sources of law, soft law, and international organizations, established for environmental purposes.

The notion of an environmental regime is very broad. I have restricted this investigation to the initial stage of the regime formation, which I view as the elaboration of multilateral agreements that comprise the foundation, or the backbone, of the chosen regimes. I have studied, compared and analysed the growth of the hazardous waste regime, the global biodiversity regime, and the climate change regime. By the growth of these regimes, I have understood the international work and negotiations on the Basel Convention, the Convention on Biodiversity, and the Climate Change Convention. I have tried to generalize the conclusions of my comparison.

My investigation has shown that the growth of environmental regimes can be caused by the rise of an environmental problem, subsequent scientific and public response to it, and finally political action. Political action includes discussions of problematic issues at international meetings, taking the decision to elaborate a convention, choosing the actor(s) responsible for the work on the convention, and the conduct of negotiations. Negotiations consist of the establishment of working groups, formal and informal discussions, text drafting, and the final conference, where the convention should be opened for signature. Final conferences are important for conventions to be ready in time, because they urge the work of negotiators.

Generally, it takes from four to eight years to prepare a global convention for opening for signature, if we count from the beginning of the political work on a relevant environmental issue. Usually conventions have some prior documents that serve as the foundation for the future agreement. Traditional conflicts during negotiations are between the North and the South, though these groups are not always homogeneous. Another repeating conflict deals with financing and how detailed a convention should be. As a rule, more than 6 official working sessions and a large number of private meetings are necessary to fulfil the negotiations. Personal initiative of political leaders contributes much to the success of negotiations.

The number of ratifications required for a convention to enter into force, may reflect how “hard” the substance of the convention is. The less the number of the required ratifications is, the more obligations the convention might impose on its state parties. A small number of states that sign the conventions immediately, and a long time from the convention’s opening

for signature to entrance into force, may reflect the same thing. On the contrary, an almost universal signature of a convention and the desire of states to become parties to it may mean that the convention is weak.

Environmental regimes are used to be elaborated through the model “a convention of a framework work character plus following protocols”, when conventions are strengthened by further binding instruments. I view this model as an effective one.

Environmental regimes can be understood in their narrow and broad meanings. In their narrow meaning, regimes are concentrated only around one global treaty. In their broad meaning, regimes can include elements connected with other treaties, which might have a special or local character.

The role of IGOs and soft law in the formation and elaboration of environmental regimes, and consequently of international environmental law should not be underestimated. My investigation stresses that IGOs provide important political and juridical leadership in the creation of environmental regimes. This proves the correctness of the interdependence approach, according to which international organizations mean more than the sum of their members. Unfortunately, environmental IGOs do not possess autonomy in decision-making. Negotiating progress depends much on the willingness of member states to compromise. The lack of this willingness can result in a delay, absence of an agreement, and/or a weak framework convention.

Soft law in its form of principles, recommendations, resolutions, or declarations is a significant part of environmental regimes. It is found in framework conventions and conventions of a framework character. Soft law can be used as a starting point for the elaboration of conventions.

Finally, I would like to point out that international environmental law is a quickly expanding area of international law today. Environmental regimes are very important components in its growing structure. There are many investigations about environmental regimes conducted by political scientists. However, the number of parallel studies conducted by lawyers is very limited. I hope that those, who work at international environmental law, would pay more attention to environmental regimes and their role in the creation and development of the traditional sources of law.

The directions for the future investigation of environmental regimes are unlimited. It is interesting to analyse how, why, and when other regimes are established or elaborated. It is also possible to research the further growth of regimes and their change. Another approach is to study the effectiveness of environmental regimes, or their connection to binding sources of law.

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