The role of international organisations in international law-making international environmental negotiations – an empirical study

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Abstract. International organisations and institutions have become an important factor in international law-making process in the last decades. This is due to a number of factors, such as the knowledge gained in their areas of activities, the proliferation of international organisations, the danger of overlapping or even contradicting provisions in the various fields and the interrelationship between various areas of international law. Thus, international organisations and institutions are no longer seen as merely being advisors and observers to international law-making, but take a more active role as they are a source of expertise. This increased role of international organisations and institutions in international law-making is clearly demonstrated in the area of international environmental law by an empirical study analysing recent law-making processes, e.g. in the area of protection of the ozone layer and climate change.

Keywords: climate change, cooperation and coordination, international environmental law-making, international organisations and institutions, ozone layer, participation, preparation, source of expertise

1. Introduction

International environmental law is an area of international law, which has grown very fast in the last decades. Since the 1970s a large number of international agreements, which deal with a broad range of environmental issues, such as ozone depletion, climate change, biodiversity, waste management and air pollution have been adopted and many have entered into force. Both the United Nations Stockholm Conference on Human Environment 1972 and the United Nations Rio Conference on Environment and Development 1992 have been an important impetus for the evolution of international environmental law. In particular, the number of international regulations dealing with environmental matters has increased rapidly. These international rules have been created through an intensive process of international negotiations. For most of these negotiations special fora had been or are created within the existing international framework, e.g. the United Nations General

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Assembly or the Governing Council of the United Nations Environmental Programme.¹

It should be borne in mind, that in most multilateral environmental agreements a number of issues – such as procedural and institutional arrangements – are dealt with by the first Conference of the Parties.² In order to ensure that this goal is achieved the so called “interim processes” are set up which are necessary in preparing the first session of the Conference of the Parties.³

Another feature of international environmental law is the use of framework conventions: an international agreement laying down basic principles and setting up institutional and procedural provisions⁴ in order to elaborate further norms.⁵ This technique has been used successfully in a number of areas, such as:

- depletion of the ozone layer – the Vienna Convention for the Protection of the Ozone Layer 1985 laid down the basic provisions which have been further elaborated in the Montreal Protocol on Substances that Deplete the Ozone Layer 1987;

¹ Cf. e.g. UNGA Resolution 45/212 dated 17 January 1991 entitled “Protection of global climate for present and future generations of mankind” which set up “a single negotiating process under the auspices of the General Assembly [...] for the preparation by an Intergovernmental Negotiating Committee of an effective framework convention on climate change” (para. 1). See for other examples Patricia Birnie and Alan Boyle, International Law and the Environment (Oxford University Press, 1992).

² Cf. Article 13 of the United Nations Framework Convention on Climate Change which reads: “The Conference of the Parties shall, at its first session, consider the establishment of a multilateral consultative process, available to Parties on their request, for the resolution of questions regarding the implementation of the Convention.” At its first session the Conference of the Parties set up an open ended working group – the so-called AG 13 – to address the multilateral consultative process (Decision 20/CP.1). For a more detailed description see Gerhard Loibl, “Compliance with International Environmental Law – The Emerging Regime under the Kyoto Protocol”, in: Wolfgang Benedek, Hubert Isak and Renate Kicker (eds.), Development and Developing International and European Law – Essays in Honour of Konrad Girkher on the Occasion of his 65th Birthday (1999), 263ff., 278.

³ Cf. e.g. the work undertaken in preparation for the entering into force of the Kyoto Protocol, the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade 1998 and the Cartagena Protocol on Biosafety 2000. See below Chapter 2(d).

⁴ International Environmental Agreements using the framework approach establish a Conference of the Parties and a Secretariat as well as subsidiary bodies dealing with such matters as scientific or technological issues. For a more detailed description and analysis of such institutional arrangements see Gerhard Loibl, “The Proliferation of International Institutions dealing with International Environmental Matters”, in: Nils Blokker and Henry Schermers (eds.), Proliferation of International Organisations (2001), 151ff.