

Abstract

Legal problems of biodiversity conservation, dissertation

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Prague, September 2010

The aim of the dissertation is to confront legal and institutional framework of conservation of biodiversity with its biological principles and most serious current threats, and assess to which extend are these systems and phenomena in conformity and where eventually exist gaps and shortages. As a method of this confrontation was chosen an overview and analysis of relevant sources of law and other related information in the context of each level of biodiversity, and further in the context of several substantive and legal connections. With respect to characteristics of biodiversity which, similarly as other components of environment, does not respect borders created artificially by man, international law of global and regional scope plays a crucial role. It is valid almost without any reservation for nearly homogenous marine environment, in case of terrestrial environment some physical and geographical fragmentation can be observed and the role of particular state with its internal legal regime is more important. Individual issues are therefore primarily discussed from the point of view of international law, attention is paid also to particularities of European law. As for legal regimes of individual states, mainly Czech and Swedish law is taken into consideration.

The methodology determines the structure of the work. Brief introduction is followed in second chapter by explanation of content of the term „biodiversity“, and reasons, approaches and targets of its conservation. Third chapter deals with subjects. As a core chapter can be perceived the fourth one which deals with legal aspects of conservation of individual levels of biodiversity, i. e. ecosystems, species and genes. Chapter five outlines several ideas on possible integration of biodiversity conservation into relevant sectors and relevant branches of law, e. g. tourism and constitutional law. Sixth chapter concludes by recapitulation of current legal situation, practical obstacles and also suggests possible or desirable changes.

On the level of ecosystems, global and regional marine law can be considered as a relatively well developed for conservation and utilisation of the world largest ecosystem. Nevertheless the lack of knowledge of all processes and relations, together with asserts of particular

interests of individual states lead to inability or reluctance to react in an appropriate way on ongoing degradation of marine environment caused by excessive utilisation, especially by fishing, by pollution or by protection of only tiny fraction of marine areas. All these aspects are most visible in coastal ecosystems which are nowadays the most threatened. Close relation of biodiversity conservation and climate change is most obvious in island ecosystems. As the most developed legal regime can be considered regime of polar ecosystems in Antarctica, while utilisation and protection of Arctic region is set just on the basis of international cooperation. But to respond to challenges emerging from climate change is impossible even for Antarctic Treaty System itself and finding solutions is responsibility mainly for contracting parties of UNFCCC. This treaty should take into consideration also marine, forest and also other types of ecosystems, including inland waters. Legal framework of the last mentioned type of ecosystems is entirely insufficient and not in accordance with their ecological importance and value of ecosystem services offered by them to humankind. Mountain ecosystems are taken into consideration only indirectly by means of protection of other ecosystems which appear in mountain areas. It is often case of forest ecosystems which can however be seen as a symbol of inability and unwillingness of international community to reach a consensus. From the biodiversity conservation point of view the absence of relevant legal regime of world forests absolutely substantial. Deforestation as one of the threats to forests is closely related to another global environmental problem, desertification. But global agreement related to this issue in the form of UNCCD can be seen as a positive example. For the utilisation of dryland is valid to some extent the same conclusion as for other types of ecosystems, especially the cultivated and urban - their conservation and sustainable utilisation are very closely related to many other sectors of human activities and their legal regimes.

Species diversity can be touched, understood, measured and therefore also regulated in an easiest manner. This is reflected in fact that almost all sources of biodiversity conservation law are taking species diversity into consideration. But on that occasion, it is important which species and in which way are taken into such a consideration. At the global level, beside general proclamations stated in the CBD, an agreement was reached only on the questions of regulation of international trade with endangered species and on protection of migratory species. Relatively well developed legal basis of conservation of marine ecosystems is supplemented by group of sources of law which are dealing with utilisation and protection of marine species. While terrestrial species are retained to a large extent to legal regimes of

individual states. As a specific issue can be seen invasive alien species, regulated already by several international and many national sources of law, but up to now mainly in a declaratory way and without higher practical fulfilment. This can be understood also as a result of widely interdisciplinary feature of this agenda.

Genetic diversity is, unlike species diversity, touchable and understandable with noticeably more difficulties but its importance is unquestionable. Legal regime of its utilisation and conservation is limited to some topics, e. g. living modified organisms and risks related with their use or genetic resources for food and agriculture. But the international community has actually an ambition to set up more detailed legal regime of utilisation of all genetic resources. Such a task is complicated not only from biological and political but also from legal point of view because it is topic which pervades many sectors of human activity, especially is closely related to international trade, protection of intellectual property rights or role and legal systems of indigenous communities. It may be expected that result of negotiations about these issues can have a significant influence on further development of global activities in the field of conservation of biodiversity.