

# Tehnike zaštite okoliša - istošna Hrvatska nasuprot globalnim standardima

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*A professional paper*

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## **ENVIRONMENTAL LAW TECHNIQUES – EASTERN CROATIA VERSUS GLOBAL STANDARDS**

### ***ABSTRACT***

*Protection of nature and human environment is mentioned in the highest values of the Croatian constitutional order. Likewise, Article 70 of the Constitution of the Republic of Croatia prescribes the duty to respect nature and the human environment. The purpose of environmental protection is to establish minimum standards for an individual and / or society to exist permanently on Earth. For this purpose, it is necessary to build a quality legal system - from local, regional to national, or global level. Numerous studies, strategies, principles, measures have been developed in all legal systems to improve the level of environmental protection. The author believes that environmental techniques, that make up the operational part of legal principles, have not been sufficiently addressed. At European level there are, to a considerable extent, codified legal systems. However, the problem arises when crossing the borders of the European Union - the problem of world scale has become Amazonian fires that need to be remedied by appropriate measures: preventive, implementation, aid measures. Two hypotheses have been put forward: Member States are uniform in their measures and the reasons for the disaster are undefined rules, measures and legal protection. In order to confirm or refute the hypotheses, the following methods were used: comparative, normativistic, historical and inductive and deductive methods.*

**Key words:** *environmental law techniques, legal protection, Amazon fires, EU, sustainable environment.*

### **1. Introduction**

The title of the paper is symbolic. So far, the conference has been called the Economy of Eastern Croatia, therefore the title of the paper is *Slavonia versus Global Standards*. On the other hand, the Amazon rainforest was taken as an example because of its significant importance to the whole world. The paper will deal with European-Croatian documents versus international documents. Two theses are addressed: Member States are uniform in measures and causes of Amazonian fires are unequal rules. The paper is divided into four parts. After the Introduction, the following is the second part of the paper that defines the concept of sustainable development through meaningful documents. The importance of sustainable development for the individual and the social environment is addressed. The next subtitle refers to legal instruments for environmental protection. Legal instruments are a key element in maintaining sustainability. The last part deals with concluding considerations.

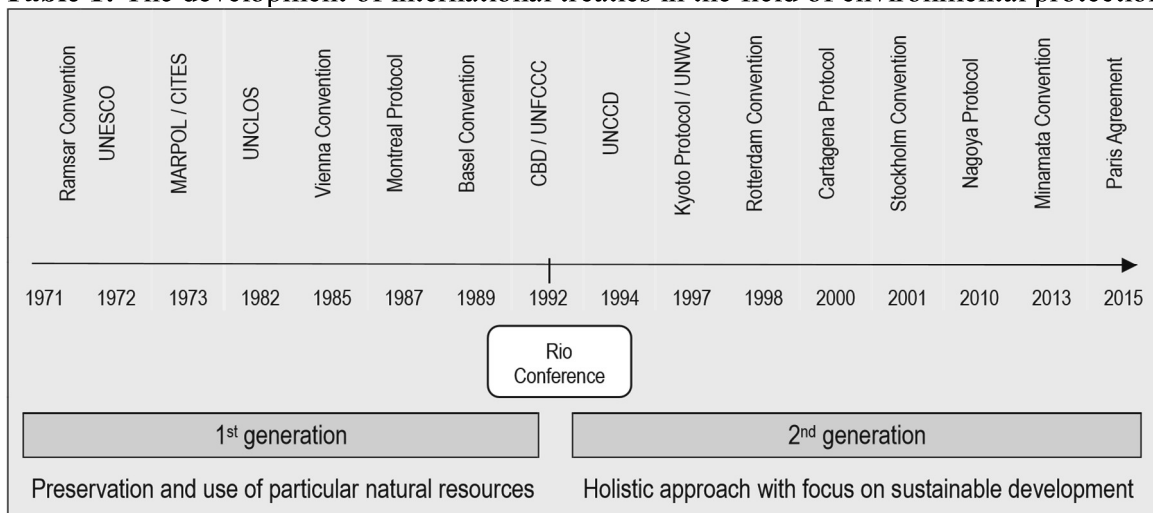
## 2. The importance of international sustainability

Third generation rights are a “newer content” rights- In the early 1970s, the right of the environment began to be debated. The term was first defined by Estonian scientist Jakob von Uexküll. Since then, cooperation has begun at national international levels in the field of environmental protection.

International environmental law is a branch of public international law with the aim of preserving the environment internationally. The goal is to control natural resources, to “sustain” sustainable development. „International environmental law covers topics such as biodiversity, climate change, ozone depletion, toxic and hazardous substances, desertification, marine resources, and the quality of air, land and water“<sup>1</sup>. The purpose of international agreements is to oblige states to use specific instruments to achieve the goal - the only objective in environmental law is sustainable development<sup>2</sup>. According to the Vienna Convention on the Law of Treaties, Article 26 lays down an obligation to comply with international agreements / treaties („Every treaty in force is binding upon the parties to it and must be performed by them in good faith“<sup>3</sup>). Other documents also recognized the importance of acting internationally. Eg. Article 21 The Stockholm Declaration is important because it prescribes a dual function: the right and responsibility of a Member State to act within its borders and to exploit natural resources and its responsibility towards other states - not to cause harm to other states. Awakening this awareness is the beginning of the signing of numerous agreements at the international level. The same principle is discussed in other conventions. In the Rio Declaration (1992), Principle 2 reiterated the content: it allows Member States to exploit natural resources while at the same time being obliged to take care not to harm other states.

Initially, international agreements focused on specific areas and later international agreements focused on the pursuit of sustainable development. The following table shows the development of international treaties in the field of environmental protection.

**Table 1:** The development of international treaties in the field of environmental protection



Source: Ministry of Natural Resources and Environment, Department of Legal Affairs, International Environmental Law, Hanoi, May, 2017., p.p. 13.

<sup>1</sup> Ministry of Natural Resources and Environment, Department of Legal Affairs, International Environmental Law, Hanoi, May, 2017., str. 11; <https://wedocs.unep.org/bitstream/handle/20.500.11822/21491/MEA-handbook-Vietnam.pdf?sequence=1&isAllowed=y>; date of access: 13.04.2020.

<sup>2</sup> Agreements can have different terms: conventions, treaties, agreements and protocols.

<sup>3</sup> Vienna Convention on the Law of Treaties, Article 26; available at: [https://legal.un.org/ilc/texts/instruments/english/conventions/1\\_1\\_1969.pdf](https://legal.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf); date of access: 15.04.2020.

Rio Conference was crucial to understand the importance of sustainable development. Sustainability is a key concept in the environmental law system. In addition, its application is of a wider scale. According to Marco Zupi “It is difficult to relate it to just one scientific discipline that coalesces and structures knowledge about the world. It is an attractive term because it is complex, full of theory and political practice. It is an expression that is not easy to define. Moreover, it is insidious since it represents very serious problems and examines the traditional way of looking at the world and life in it.”<sup>4</sup> Sustainability is often understood as eco-sustainability and “denotes the essential ability of any system to maintain unchanged its own characteristics and properties in a continuous relationship with space and time in which it is located”.<sup>5</sup> The “original” expert definition can be considered to be the definition by the UN World Commission on Environment and Development<sup>6</sup> from 1987 in a document titled “Our Common Future”: “development sustainable to ensure that it meets the needs of the present without compromising the ability of future generations to meet their own needs”.<sup>7</sup> Etymologically, the definition of sustainable development can be taken from Latin language *sustineo* (*sub-teneo*) in which it has a double meaning: “to hold up, sustain, endure” and “to take over, to convey and to commit oneself, to take on the obligation and the responsibility”.<sup>8</sup> United Nations Conference on the Human Environment, the so-called Stockholm Conference, was the first conference convened for the purpose of international environmental protection. It was held in June 1972. Numerous environmental conferences have been held to date. The Convention on Biological Diversity was adopted in Rio in 1992. with the purpose of protecting biodiversity, the sustainable use of natural resources. A further step in protecting biodiversity is the 2000 Cartagena Protocol, whose purpose is to ensure handling, transport and use of modified organisms pursuant to the precautionary principle. The Second Protocol pursuant to Article 19 of the Convention on Biological Diversity is the Nagoya Protocol adopted in 2010.<sup>9</sup> The Johannesburg Declaration on Sustainable Development and the Implementation Plan were adopted in 2002. Also important to mention is the meeting of the UN Members organized in Rio de Janeiro in June 2012 named “Rio+20”, and the outcome of this meeting was the document “The Future We Want”, which, with the purpose of sustainable development, calls for mutual cooperation of three components: economic, social and environmental. The aim of the Paris Agreement is to preserve the current situation from possible climate change. In other words, increase the capacity to adapt to negative climate change.

### 3. Legal instruments of environmental protection

“Environmental techniques are environmental measures that are prescribed in the process of establishing an environmental permit through the determination of the best available techniques

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<sup>4</sup> Zupi, Marco, Looking to the Future (Reflecting on the Present) Sustainability: Meanings, Ideas and Political Challenges, The Right to Peace for a Sustainable Planet, 1st Human Rights Meeting, Contributors: Oxfam Italia / University of Florence / Lower Normandy / International Institute for Peace and Human Rights in Caen / Istria County / Tuscany Region, 2015., p. 21

<sup>5</sup> Ibid, p. 23

<sup>6</sup> The Commission was also known as the Brundtland Commission after the Norwegian prime minister Gro Harlem Brundtland

<sup>7</sup> Rossi, E., Presentation, The Right to Peace for a Sustainable Planet, First Meeting of Human Rights, contributors: Oxfam Italia / University of Florence / Lower Normandy / International Institute for Peace and Human Rights in Caen / Istria County / Tuscany Region, 2015., p. 11

<sup>8</sup> Ibid, p. 23

<sup>9</sup> Ministry of Natural Resources and Environment, Department of Legal Affairs, International Environmental Law, Hanoi, May, 2017., str. 11; <https://wedocs.unep.org/bitstream/handle/20.500.11822/21491/MEA-handbook-Vietnam.pdf?sequence=1&isAllowed=y>; date of access: 13.04.2020.

for a plant, and include technology and how technology is planned, built, maintained, used and disposed of."<sup>10</sup>

According to the authors, there are two types of instruments in environmental policy: command - control and economic instruments. In doing so, command and control instruments include the monitoring of emissions by non-marketable quotas and technical standards, while all others constitute a group of economic (market) instruments.<sup>11</sup> According to author Elli Louka, most international instruments are a command-and-control approach. They are mostly based on the international exchange of information and the submission of reports.<sup>12</sup>

Above all, the Constitution should be singled out as the foundation of every state. Article 3 of the Constitution of the Republic of Croatia prescribes environmental protection as a fundamental value. Article 70 stipulates that the state ensures a healthy environment. Also, self-government units take care of the environment. The next document in importance is the Environmental Protection Act<sup>13</sup>. The Environmental Protection Act contains the following facts: objectives, principles of environmental protection, environmental protection entities, documents of sustainable development and environmental protection, environmental instruments, environmental monitoring, environmental information system, public participation and access to justice in environmental matters, liability for damages, environmental financing, misdemeanour provisions and oversight of the environmental protection system. At the national level, there is also Environmental Protection Plan of the Republic of Croatia until 2020 (hereinafter: Plan)<sup>14</sup>, Sustainable Development Strategy of the Republic of Croatia<sup>15</sup> and the Environmental Protection Intervention Plan<sup>16</sup>. The Plan prescribes environmental instruments that seek to eliminate pollution at source. The Strategic Environmental Impact Assessment, the Environmental Impact Assessment and the Environmental Permit were specifically highlighted. Also, separate information was provided - local and regional self-government units have a special role in environmental protection, but self-government units have not fully fulfilled their role. They have not fulfilled their role because they are not independent in performing their tasks in the field of environmental protection and frequent contacts with the competent Ministry.

In practice, there are various techniques aimed at furthering the objectives and applying the basic principles of environmental rights. The purpose of preventive measures is to either avoid or reduce or eliminate the risk of harm. Preventive measures include regulation, licenses and environmental impact assessment. There are four types of standards within regulations: quality standards, emission standards, process standards and product standards. Quality standards define the maximum permissible pollution in an area and depend on geographical features. Emission standards mean a certain amount or concentration of pollution that can be emitted from a source. Process standards require a specific production method, and product standards define the physical or chemical composition of an object, the handling of the object, and the level of pollution that the product can emit during its use. In certain situations, certain rules may be imposed if an action, product or process poses a risk of environmental damage. Licensing, as the second element of regulation, is the most widely used technique for pollution prevention. Most legal systems have provided lists of licensed actions. As a third component,

<sup>10</sup> Environmental Protection Act, National newspaper 80/13, 153/13, 78/15, 12/18, 118/18, Article 4.

<sup>11</sup> Kordej De-Vila, Ž., Papafava, M., Ekonomski instrumenti u politici zaštite okoliša u Hrvatskoj – teorijska saznanja i iskustva, Privredna kretanja i ekonomska politika, broj 94/2003.,p.p. 29.

<sup>12</sup> Louka, E., International Environmental Law, Cambridge University Press, 2006.

<sup>13</sup> Environmental Protection Act, National newspaper 80/13, 153/13, 78/15, 12/18, 118/18

<sup>14</sup> Environmental Protection Plan of the Republic of Croatia until 2020, National newspaper 46/02

<sup>15</sup> Sustainable Development Strategy of the Republic of Croatia, National newspaper 30/09

<sup>16</sup> Environmental Protection Intervention Plan, National newspaper 82/99, 86/99, 12/01

an environmental impact assessment appears, in which the applicant submits a written document defining the environmental impact of the action. Therefore, the assessment must include a description of the proposed action, a description of the potentially threatened environment, a description of practical alternative actions, an assessment of possible environmental impacts, mitigation measures, indications of potential uncertainties that may be encountered. Implementation measures are oversight, reporting and control (monitoring). Supervision consists of collecting data and submitting it to an institution to analyze it. Control or monitoring is the continuous collection of information and their constant comparison with the relevant parameters. Despite all the instruments available, pollution is still occurring. To this end, there are assistance and coercive measures: the nature of liability, the scope of liability, coercive measures. The principle of liability is based on the fact that the damage has occurred, but it is imposed on the owner of the shop. The problem is with the level of responsibility, as it is mostly about the so-called "soft law." The problem, as always, is profit because states do not want to take responsibility at the expense of profitability.

According to the Environmental Protection Act<sup>17</sup>, the following environmental protection instruments are envisaged in the Republic of Croatia: environmental quality standards and technical environmental standards; strategic assessment of the environmental impact of the strategy, plan and program; environmental impact assessment; environmental permit; prevention of major accidents involving dangerous substances; spatial plans as environmental instruments; transboundary environmental impact of strategy, plan and program, intervention and plant; environmental measures for activities for which no environmental impact assessment obligation is prescribed. Quality standards contain limit values, but areas that are more sensitive are defined by law and others can be defined by a Government decree or ministerial regulation. The strategic environmental impact assessment foresees significant environmental impacts that may result from the implementation of a strategy, plan or program. Strategic evaluation is carried out during the drafting of the strategy, plan and program proposals. During the strategic assessment, a strategic study is conducted to assess the expected environmental impacts that the implementation of the strategy, plan and program may cause. An environmental impact assessment is an assessment of the possible significant environmental impacts of the intervention, based on their nature, size or location. Ultimately, the purpose and purpose of the environmental permit is to obtain "comprehensive environmental protection through integrated pollution prevention and control, ensuring a high level of environmental protection and conditions to prevent significant environmental pollution from industrial activities."<sup>18</sup> Preventing major accidents involving hazardous substances is also one of the environmental instruments. Spatial plans as an environmental instrument emphasize the distance between plants and residential areas, public places and ecologically significant areas. If the implementation of a strategy, plan or program could affect the environment and / or health of the people of another country, it shall inform the competent authority of the other country of the draft proposal, plan or program. If an environmental impact assessment obligation is not prescribed and the contractual obligations established by international treaties or agreements or by special regulations are required, then an environmental study must be prepared. Environmental monitoring is the systematic monitoring of environmental quality, changes in the environment and its components. For the purpose of better implementation and implementation of environmental measures, it is possible to develop an operational environmental monitoring program at the request of the operator. In addition, it is also possible to set up reference centres for environmental monitoring. The parent law has overlooked expropriation or restrictions on real rights if there is an interest by the state in setting up facilities or measuring devices for environmental monitoring purposes.

<sup>17</sup> Environmental Protection Act, National newspaper 80/13, 153/13, 78/15, 12/18, 118/18

<sup>18</sup> Environmental Protection Act, National newspaper 80/13, 78/15, 12/18, 118/18



In the Treaty on the Functioning of the European Union, the European Union, in Articles 191 to 193, addresses the following objectives: to ensure the protection of human health, the protection of the human environment and international cooperation in order to achieve the above objectives.<sup>19</sup> Environmental policy is based on the precautionary principle and the precautionary principle. Furthermore, the principle that the polluter pays because the damage is repaired at the source is also crucial. The measures envisaged to achieve the aforementioned objectives are: the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall decide on the achievement of the above objectives; in addition, a special legislative procedure is also underway to achieve the set objectives. Adopts the following measures in accordance with the above procedures: provisions of a fiscal nature; measures relating to spatial planning; quantitative management of water resources; land use and waste management; measures concerning the use of energy sources.<sup>20</sup> Member States may also introduce more stringent safeguards. Under Directive 2004/35 / EC of the European Parliament and of the Council of April 21, 2004 on environmental liability with regard to the prevention and remedying of environmental damage, precautionary measures are prescribed if the damage has not yet occurred, but there is an imminent danger. In such situations, the operator<sup>21</sup> is obliged to inform the competent authority of the current situation and the competent authority may at any time request the following:

1. Provision of information in case of imminent threat of environmental damage
2. Taking preventative measures
3. Instruct the operator on all necessary measures
4. Implement the necessary measures by own action.<sup>22</sup>

However, if damage has occurred, the operator shall inform the competent authority and take the following steps: putting all pollutants under control so as not to further affect human health and the environment. In addition, the competent authority may request the operator to provide additional information and to put in place additional remedial measures. Aware of the weight of environmental responsibility for present and future generations, in 2001 they set minimum standards for environmental inspections. Although the Standards are optional, the primary starting point for adoption is the control over the implementation of national legislation. An environmentally friendly solution is to strengthen the enforcement of national legislation. Minimum standards can only seemingly satisfy the need for reasons they are optional. Some minimum standards in the area of inspection are the following: to plan in advance how inspection is conducted; make a register of controlled installations; a general assessment of major environmental issues; store inspection results, etc.

The Stockholm Convention and the Treaty of Paris have been singled out internationally. The Stockholm Conference adopted certain recommendations in an Action Plan that enables international action:

1. Environmental Assessment (evaluation and review, research, monitoring, information exchange);

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<sup>19</sup> Treaty on the Functioning of the European Union (2016/C 202/01), Article 191

<sup>20</sup> If any of these measures entails high costs for the public authority of each Member State, then temporary derogation and / or funding from the Cohesion Fund is possible.

<sup>21</sup> According to Directive 2004/35 / EC of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage, L 143/56 Article 2 (6) "Operator" means any natural or legal, private or public person who operates or controls the occupational activity or, where this is provided for in national legislation, to whom decisive economic power over the technical functioning of such an activity has been delegated, including the holder of a permit or authorisation for such an activity or the person registering or notifying such an activity.

<sup>22</sup> Directive 2004/35 / EC of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage, L 143/56, Article 5

2. Environmental Management (goal setting and planning, international consultation and agreements);
3. Supporting measures (education and training, public information, organization, financing, technical co-operation).

All 155 recommendations are categorized in the Action Plan by area: the global environmental assessment programme (Earthwatch), the environmental management activities and the supporting measures.

The instruments available under the Paris Agreement are:

- (a) „Early warning systems;
- (b) Emergency preparedness;
- (c) Slow onset events;
- (d) Events that may involve irreversible and permanent loss and damage;
- (e) Comprehensive risk assessment and management;
- (f) Risk insurance facilities, climate risk pooling and other insurance solutions;
- (g) Non-economic losses; and
- (h) Resilience of communities, livelihoods and ecosystems.“<sup>23</sup>

According to the Constitution of the Federal Republic of Brazil, the environmental chapter provides for certain measures:

- Preserve and restore ecological processes and ensure ecological treatment of species;
- Preserve biodiversity and monitor the effects of genetic engineering;
- Organize territorial units and ensure their protection;
- Make an environmental impact assessment where there is a potential risk of danger;
- Control the production, sale and use of techniques that can pose environmental risks;
- Conduct environmental education;
- Protect the flora and fauna in the manner prescribed by law.<sup>24</sup>

The Amazon rainforest, the so-called the lungs of the world deservedly got a new name. According to experts, there are a number of reasons for the importance of the whole world: conservation is essential for agricultural production and conservation of the so-called. "Flying rivers." The term refers to water vapour generated by evaporation, and the whole process affects the amount of precipitation in South America. The Amazon rainforest is also affecting climate change, as tropical forests are generally thought to absorb 90 billion to 140 billion tons of carbon, all of which affect the stability of the world's climate. The start of international codification can be seen as the 1992 United Nations Convention on Climate Change and the 1997 Koyoto Protocol focusing on greenhouse gas emissions. The continuation of the Protocol is the 2011 Paris Agreement. Brazil is among ten countries with huge greenhouse gas emissions. In line with the above, Brazil is committed to reducing its greenhouse gas emissions by 43% by 2030. The stated goal can only be achieved by additional afforestation, which is prescribed for 12 million hectares of land. Due to its rich flora and fauna, the Amazon rainforest has the highest biodiversity in the world, which is also essential for maintaining homeostasis worldwide.<sup>25</sup>

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<sup>23</sup> Paris Agreement, 2015., article 8.: available at:

[https://unfccc.int/files/meetings/paris\\_nov\\_2015/application/pdf/paris\\_agreement\\_english\\_.pdf](https://unfccc.int/files/meetings/paris_nov_2015/application/pdf/paris_agreement_english_.pdf); date of access: 14.04.2020.

<sup>24</sup> Source: <http://www.braziliannr.com/brazilian-environmental-legislation/>; date of access: 16.04.2020.

<sup>25</sup>Source: <https://www.dw.com/bs/amazonska-pra%C5%A1luma-va%C5%BEa-plu%C4%87a-svijeta/a-50156633>, date of access: 6.3.2020.

#### 4. Concluding thoughts

The first hypothesis can be regarded as proven, ie there is a uniformity of legal rules at European Union level. First of all, this is evident from the main law, the Environmental Protection Act<sup>26</sup>, which in its provisions contains a variety of environmental instruments, but also sanctions in case of non-compliance. The Environmental Protection Act is fully in line with European legal regulations. During its accession to the European Union, the Republic of Croatia underwent the harmonization process.

The second thesis set out in the abstract has not been confirmed - there is no uniformity of legal regulations at the global level. It is believed to exist because the signing of international documents (though not obligatory) entails some forms of responsibility. States Parties are morally bound (by the international community, by the environment) to apply international agreements. The Stockholm Conference, with its environmental assessments, environmental management and incentive measures, is cited as an example. Also mentioned is the Paris Agreement, which includes risk assessment, risk management, the precautionary principle. There are no mandatory standards in international agreements. States Parties are required to submit reports, but there are no sanctions. Legal instruments in the field of environmental protection are in the area of "soft law". However, the importance of the environment goes beyond the elements of "soft law". The importance of environmental protection should be placed on the obligatory, legal and imperative basis by states. The United Nations Conference on the Human Environment in Stockholm is based on recommendations. Also, the Convention on Biological Diversity, Cartagena Protocol, Nagoya Protocol, United Nations Conference on Sustainable Development in Rio de Janeiro RIO + 20 do not have a sanction system in place. There is no relationship between the commanding and sanctioning norms. The issue that remains at the national level is the implementation of measures in the country and supervision or sanctioning in the signatory state. In addition to the cause-and-effect relationship between the norm and the sanction, an effective state is needed. An efficient state implies effective institutions, implies political, economic and administrative efficiency in the state. Therefore, the measures are identical in Slavonia and the Amazon, it is only a matter of implementation, control and control in the countries. The Constitution of the Federal Republic Brazil also has environmental instruments: the conservation of ecological species, the control of genetic engineering, the control, sale and use of techniques that can pose a threat to the environment, etc.<sup>27</sup>

The international community should respond more rigorously in certain situations. The first recommendation would be to control trade relations between countries that do not respect the obligations of international environmental agreements. This would make compliance with the obligations assumed in the field of "soft law". Although the application of the principle of subsidiarity is emphasized today, it may be necessary at some point to pursue other measures for the purpose of 'good governance'. Other measures contrary to the principle of subsidiarity - more frequent supervision and sanctioning by the international community. Key situations bring with them key reactions. Sometimes measures contrary to the principle of subsidiarity may have their justification. In addition, the principle of subsidiarity means that if states are incapable of solving the problem, then the action of a supranational organization is justified. This would be the true meaning of the principle of subsidiarity - if the States Parties did not properly implement the measures taken by international agreements, the focus should be shifted to a supranational level. In such a situation we can expect sustainable development - cohesion of economy, efficiency and democracy. In this situation, there would be no difference between

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<sup>26</sup> Environmental Protection Act, National newspaper 80/13, 153/13, 78/15, 12/18, 118/18

<sup>27</sup>To see footnote 24.

Slavonia and the Amazon because the international community would have obligatory instruments in the international environmental policy.

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