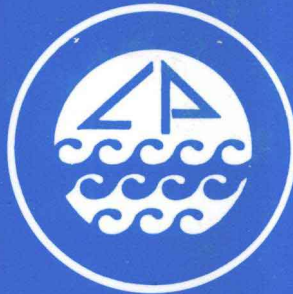


CENTER FOR OCEANS LAW AND POLICY

THE STOCKHOLM
DECLARATION AND LAW OF
THE MARINE ENVIRONMENT

Edited by
Myron H. Nordquist,
John Norton Moore &
Said Mahmoudi



Martinus Nijhoff Publishers

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Prefatory Note

The Center for Oceans Law and Policy, University of Virginia School of Law, took the occasion of its Twenty-Sixth Annual Conference to travel to Stockholm, Sweden, to mark the Thirtieth Anniversary of the landmark 1972 Stockholm Declaration on the Human Environment. This timely conference, held on May 22-25, 2002, was co-sponsored with the Department of Law, Stockholm University, and took place at the University's new world-class conference center, Aula Magna. The conference marked the achievement and historical imprint that the Declaration has left on international law, but also looked forward to present-day challenges, and at times even questioned the Declaration's future relevance. However, the weight of expertise and scholarship brought to bear at this conference made it clear that the Stockholm Declaration began a movement, whose momentum only increases with time.

The President of Stockholm University, Professor Gustaf Lindencrona, opened the conference by welcoming everybody to the University's beautiful new facilities and reminding the participants of Stockholm University's storied history of involvement and leadership in the area of international and maritime law. Professor John Norton Moore, the Director of the Center for Oceans Law and Policy, then welcomed participants and set the agenda for the conference. Next, Professor Said Mahmoudi, from the Faculty of Law, Stockholm University, introduced the distinguished Former Swedish Foreign Minister, His Excellency Hans Blix. Dr. Blix, one of the primary authors of the Stockholm Declaration, delivered the conference's opening comments. His first-hand insight and humor added both color and form to the story of the Stockholm Declaration, and provided a foundation for the discussions that followed.

The first panel, on the impact of the Stockholm Declaration on international environmental law principles, was moderated by Professor John Norton Moore. Professor Alexandre Kiss, from the University of Strasbourg, began the discussion by outlining the principles of the Declaration and speculating on their future. Professor Jutta Brunnée of the University of Toronto followed up by describing the current state of the structure and process of international law. Professor Patricia Birnie, from the University of London, ended the panel by discussing the Law of the Sea Convention, straddling stocks, and biodiversity agreements and their respective roles in the development of international law.

The next panel focused on the impact of the Stockholm Declaration on international environmental institutions. Presiding over this second panel was Judge David Anderson of the International Tribunal for the Law of the Sea. Professor Geir Ulfstein, of the University of Oslo, began the discussion with an overview of the marine environment and international environmental governance. Next, the WTO and the 1982 Law of the Sea Convention were

Prefatory Note

discussed by Professor Alan Boyle of the University of Edinburgh. Finally, Professor David Freestone of the World Bank explained the role of the World Bank in the marine environment area.

The last panel of the day covered regional protection of the marine environment. Judge Tullio Treves of the International Tribunal for the Law of the Sea presided. Professor Jonas Ebbesson of Stockholm University started off by discussing the Baltic Sea Area. Hard and soft law solutions to future fisheries problems were taken up next by Mr. William R. Edeson, a Senior Legal Officer with the FAO. Professor Rainer Lagoni, from the University of Hamburg, then addressed himself to the OSPAR Convention of 1992 and the protection that it affords the North Sea. To round out the panel, Dr. Alexander Skaridov of the Russian Association of International Law discussed issues concerning the Polar Seas.

The second day of the conference started with a panel on the marine environment in enclosed and semi-enclosed seas, moderated by Judge Anatoly Kolodkin of the International Tribunal for the Law of the Sea. Dr. Maria Gavouneli of the Hellenic Institute of International and Foreign Law began by discussing the Mediterranean Sea. Professor Nilufer Oral of Bilgi University then commented on the Black Sea. The feasibility of sustainable use of the Caspian natural resources was then taken up by Dr. Sergei Vinogradov, of the University of Dundee. To wrap up, Professor Igor Vio discussed the Adriatic Sea.

The fifth panel was devoted to marine jurisdictional issues with Judge Choon Ho Park as the moderator. The first topic on the table was the latest jurisdictional developments and the Law of the Sea Convention, which were addressed by Professor Kari Hakapää of the University of Lapland. Professor Erik Franckx of the Free University of Brussels then took up the interests of coastal states. Flag state perspectives were next covered by Dr. Marie Jacobsson, a senior legal advisor in the Swedish Ministry for Foreign Affairs. The panel was closed out by Mr. J. Ashley Roach, from the U.S. Department of State Office of the Legal Adviser, who discussed particularly sensitive sea areas.

The final panel of the second day was given to science and the marine environment, and was presided over by Judge Dolliver Nelson of the International Tribunal for the Law of the Sea. Professor Carl Folke, from Stockholm University, began the discussion. Mr. Bertil Hägerhäll of Krav then gave the panel some NGO perspectives. The Aegean Sea was explored as an example by Dr. Bayram Öztürk, of the Turkish Marine Research Foundation. Following suit, Mr. George Taft, of the U.S. Department of State Office of the Legal Adviser, discussed the continental margins in this context.

The final day of the conference was led by the Secretary-General of the International Seabed Authority, His Excellency Satya N. Nandan, as he monitored a panel on sustainable development and the marine environment. This panel reviewed the progress in high seas fisheries governance, courtesy of

Professor Moritaka Hayashi of the Waseda University School of Law. Iceland's perspectives on the management of the utilization of living marine resources were introduced by Mr. Thorir Skarphedinsson, and concluded by Mr. Stefan Asmundsson, both from the Icelandic Ministry of Fisheries. Then, Mr. William Edison concluded his earlier remarks on hard and soft law solutions to fisheries problems. Mr. Ray Gambell, former Secretary of the International Whaling Commission, did not deliver a paper, but his discussion of the moratorium/management debate is included in this publication. Mr. Dick Monroe of the Darden Environmental Trust was unable to attend the conference, but his paper on the corporate solution to ridding the world of poverty and pollution is also included in this publication.

Professor Myron Nordquist, the Associate Director of the Center for Oceans Law and Policy, introduced the first conference keynote speaker, Bjorn Lomborg, a Professor at the University of Aarhus, and the author of the renowned *Skeptical Environmentalist*. An authorized abstract of Professor Lomborg's address, as well as excerpts from a spirited question and answer period that followed, are included in this publication.

After a well-deserved lunch, the conference began the eighth and final panel, this time looking towards future developments. The final panel was moderated by Judge Alexander Yankov from the International Tribunal for the Law of the Sea. The International Maritime Organization Director for Legal and External Affairs, Dr. Rosalie Balkin, spoke first on new developments in compensation. The panel ended with a discussion of international challenges in addressing marine environmental problems, delivered by Ambassador Mary Beth West of the U.S. State Department.

The conference was concluded by Professors John Norton Moore and Said Mahmoudi sharing the honor of introducing the United Nations Under Secretary-General of Legal Affairs, His Excellency Hans Corell.

Secretary Corell aptly encapsulated the nature of the conference by reviewing the history of the international law activity spawned by the Stockholm Declaration. He underscored the heavy influence that the Declaration has had on the work of the conference participants. He concluded by summarizing the United Nations' stewardship over the Declaration and by forecasting the challenges ahead.

Note by the Editors

The Twenty-Sixth Annual Conference of the Center for Oceans Law and Policy, University of Virginia School of Law, was held in Stockholm, Sweden, on May 22-25, 2002. The University of Stockholm Faculty of Law graciously co-sponsored this year's conference in its beautiful city at the impressive new Aula Magna conference center. The result was a breathtaking and historically significant setting.

The cooperation between the Center for Oceans Law and Policy and the Stockholm University Faculty of Law reinforced old friendships and forged new ones. The Center for Oceans Law and Policy is especially indebted to Professor Said Mahmoudi.

Many thanks are due to the team of the University of Virginia's Oceans Center. We are again indebted to Donna D. Ganoe, the Center's Executive Administrator, who expertly managed another successful annual conference. She was ably assisted by Kay W. Wood and Kathy H. Wood. A particular note of gratitude is due to James D. Hicks, Class of 2004, University of Virginia School of Law, who is the Associate Editor of this publication.

The Editors are keenly aware that the success of the Stockholm conference was a product of collegial efforts from across the globe, and our heartfelt thanks is extended to all who contributed to this addition to the literature of international maritime law.

CONTENTS

Prefatory Note	ix
Note by the Editors	xiii
Introduction	
<i>Said Mahmoudi</i>	3
Professor Faculty of Law, Stockholm University	
Welcoming Remarks	
<i>Gustaf Lindencrona</i>	9
President Stockholm University	
<i>John Norton Moore</i>	11
Director Center for Oceans Law and Policy	
Keynote Addresses	
<i>Hans Blix</i>	15
Former Swedish Foreign Minister	
<i>Bjørn Lomborg</i>	25
Professor of Statistics University of Aarhus	
<i>Hans Corell</i>	43
Under-Secretary-General for Legal Affairs Legal Counsel of the United Nations	
Panel I: Impact of the Stockholm Declaration on International Environmental Law Principles <i>John Norton Moore, Moderator</i>	
The Destiny of the Principles of the Stockholm Declaration.....	53
<i>Alexandre Kiss</i>	

Table of Contents

The Stockholm Declaration and the Structure and Processes of International Environmental Law	67
<i>Jutta Brunnée</i>	
Impact on the Development of International Law on Cooperation: The United Nations Law of the Sea, Straddling Stocks and Biodiversity Convention	85
<i>Patricia Birnie</i>	
Panel II: Impact of the Stockholm Declaration on International Environmental Institutions <i>David Anderson, Moderator</i>	
The Marine Environment and International Environmental Governance	101
<i>Geir Ulfstein</i>	
The World Trade Organization and the Marine Environment	109
<i>Alan Boyle</i>	
International Financial Institutions and the Marine Environment: A View from the World Bank	119
<i>David Freestone</i>	
Panel III: Regional Protection of the Marine Environment <i>Tullio Treves, Moderator</i>	
Regional Approaches to the Protection of the Marine Environment	137
<i>Tullio Treves</i>	
Protection of the Marine Environment of the Baltic Sea Area— The Impact of the Stockholm Declaration	155
<i>Jonas Ebbesson</i>	
Soft and Hard Law Aspects of Fisheries Issues: Some Recent Global and Regional Approaches	165
<i>William Edeson</i>	
Regional Protection of the Marine Environment in the Northeast Atlantic Under the OSPAR Convention of 1992	183
<i>Rainer Lagoni</i>	

Polar Seas	205
<i>Alexander S. Skaridov</i>	
Panel IV: Marine Environment in Enclosed and Semi-Enclosed Seas	
<i>Anatoly Kolodkin, Moderator</i>	
New Forms of Cooperation in the Mediterranean System of Environmental Protection.....	223
<i>Maria Gavouneli</i>	
The Black Sea: A Case Study in Regional Cooperation	237
<i>Nilufer Oral</i>	
The Protection of the Marine Environment in the Adriatic Sea.....	257
<i>Igor Vio</i>	
Panel V: Marine Environment Jurisdictional Issues	
<i>Choon Ho Park, Moderator</i>	
Jurisdictional Developments and the Law of the Sea Convention: Some Observations on Vessel-Source Pollution	277
<i>Kari Hakapää</i>	
Marine Environment Jurisdictional Issues: Coastal States	287
<i>Erik Franckx</i>	
Flag State Perspectives	299
<i>Marie Jacobsson</i>	
Particularly Sensitive Sea Areas: Current Developments	311
<i>J. Ashley Roach</i>	
Panel VI: Science and the Marine Environment	
<i>Dolliver Nelson, Moderator</i>	
The Stockholm Declaration and Law of Marine Environment: An NGO Perspective.....	353
<i>Bertil Hägerhäll</i>	

Table of Contents

Environmental Problems in the Aegean Sea	359
<i>Bayram and Ayaka Amaha Öztürk</i>	
Of Scientists, Science and the Continental Shelf	367
<i>George Taft</i>	
Panel VII: Sustainable Development and the Marine Environment	
<i>Satya N. Nandan, Moderator</i>	
Three Decades' Progress in High Seas Fisheries Governance: Towards a Common Heritage Regime?.....	375
<i>Moritaka Hayashi</i>	
Management of the Utilization of Living Marine Resources	399
<i>Thorir Skarphedinsson</i>	
Iceland's Adherence to the International Whaling Commission	405
<i>Stefan Asmundsson</i>	
Moratorium or Management?	413
<i>Ray Gambell</i>	
Replacing Bias with Reality to Achieve the Stockholm Declaration's Dream of a Poverty and Pollution Free World	427
<i>Dick Monroe</i>	
Panel VIII: Future Developments	
<i>Alexander Yankov, Moderator</i>	
Some Future Developments in Liability and Compensation for Environmental Damage at Sea	437
<i>Rosalie P. Balkin</i>	
International Challenges in Addressing Marine Environmental Problems	455
<i>Mary Beth West</i>	

INTRODUCTION

Introduction

*Said Mahmoudi**

For anybody who deals with international environmental law, the First United Nations Conference on Human Environment, held in Stockholm, Sweden, 1972 is a milestone. The Stockholm Conference and the declaration that the participating States adopted at the end of the conference are generally considered as the starting point for what constitutes today the modern international law and policy for the environment.

The importance of the Stockholm Conference and its declaration is not in elaborating an enduring legal regime for the international protection of the environment. Neither is it because the ideas spelled out in the Stockholm Declaration, assessed by today's values and criteria, are revolutionary, progressive or unique. This was not indeed the purpose of the Stockholm Conference. The ambition of Sweden by suggesting to the UN General Assembly in 1968 to convene an international conference on the environment in Stockholm was to put environmental issues, particularly transboundary environmental problems, on the agenda of the international community. To use more modern language, the goal was to make the protection of the environment a common concern of humankind.

Given the general attitude of States at that time and the level of our knowledge about environmental problems and their causes, the task of the Conference was difficult. A large number of developing country participants assumed there was a conflict between the need for industrial development and the requirements to protect the environment. Such countries lacked the political will to agree on a declaration of principles for a subject that was viewed to be the concern of only a few Western countries. The situation, as regards political attitude and the willingness of States to engage, was apparently not comparable with the case of the two declarations of principles on deep seabed resources and on friendly relations of States that had been adopted two years earlier.

The significance of the Stockholm Declaration lies in the fact that despite all the obstacles and lack of genuine political will on the part of a great number of States, it succeeded in laying down a number of general principles that since then have constituted a framework and a source of reference whenever a step has been taken for the international protection of the environment.

During the last three decades, the attitudes of States toward environmental issues and the methods they use for making international environmental law have changed. The concept of sustainable development, which now seems to have

* Professor of International Law, Stockholm University.

been accepted by a considerable number of States as a legal principle, has paved the way for the convergence of development and protection of the environment. At the same time, the defensive, reactive attitude of the environmental lawmakers in the 1970's has been substituted by an offensive approach based on precaution. The piecemeal regulation of various environmental sectors has been replaced by more holistic, integrated legislation based on an adaptive, eco-system approach.

After thirty years, the Stockholm Declaration has, of course, been superseded by a number of significant international documents as regards the material content of the modern international environmental law. But many of its principles remain as valid today as they were when they were adopted. The basic concepts behind these principles have evidently passed the test of time. Repeated references to the Stockholm Declaration in almost all major international environmental agreements show that the Declaration is indeed a milestone and the starting point for the body of laws and policies that today apply to the protection of the environment at the international level.

The principles in the Stockholm Declaration are not limited to any specific area of environmental law. Now, three decades after its adoption, we believe that it is desirable to assess the impact of this seminal document on various areas of international environmental law. To celebrate the thirtieth anniversary of the adoption of the Stockholm Declaration, the Center for Oceans Law and Policy, University of Virginia School of Law and Faculty of Law of Stockholm University organized a joint conference in Stockholm, 22-25 May 2002. The focus of this conference was on the marine environment, thereby its title "Stockholm Declaration and Law of the Marine Environment." The choice of the marine environment as a subject was partly due to the fact that the conference was organized by two institutions whose main focus has been on research relating to the marine environment. Beyond that, there is virtual consensus among international environmental law experts that protection of the marine environment is better and more comprehensively regulated than any other subject in international environmental law. The anniversary of the Declaration was well timed for a status report on the international law of the marine environment. Despite attempts at comprehensive regulation, we found that many new marine problems have arisen and that loopholes exist either in the substance of the law or in its implementation.

The 2002 Conference brought together a number of the world's leading experts on the law of the sea and international environmental law. This unique combination of expertise was characterized by an unprecedented participation of younger and older generations of outstanding scholars and diplomats. The result was three days of highly stimulating exchanges of views and discussions. Analyses by the distinguished panelists demonstrated clearly that the Stockholm

Declaration has had an indelible impact on certain areas whereas in other areas its influence has been indirect or less significant.

Since the main theme of the Conference was the Stockholm Declaration, it was particularly noteworthy that the drafter of that famous text, Dr. Hans Blix, explained for the first time the inside history behind this important declaration. The Conference thereafter focused on several specific and highly topical issues relating to the international environmental law in general and law of the marine environment in particular. Mention should be made of, among others, the papers dealing with the present state of the protection of several regional and semi-enclosed seas, the alarming global depletion of certain fish stocks and new theories about the status of the world environment. I warmly recommend to readers each of the individual papers in the proceedings of the Conference.

The success of the 2002 conference was due to exceptionally close and effective working relationships between the two organizing institutions. On behalf of the Faculty of Law of Stockholm University, I would like to express my gratitude for the outstanding collegial cooperation of the Center for Oceans Law and Policy of the University of Virginia School of Law.

