

## 리오宣言의 法的 問題\*【要約】

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1972년 스톡홀름에서 있는 人間環境宣言 20周年을 맞아 1982년 6월 3일부터 14일까지에 브라질의 리오 데 자네이로에서 개최된 바 있는 地球頂上會議는 環境과 開發에 관한 리오宣言, 議題 21(Angenda 21) 및 山林原則(Forest Principle)과 같은 세 가지의 宣言的 文書와 氣候變化協定 및 生物多樣性協定을 채택하였다. 리오宣言은 地區環境保護를 위한 國家의 責任과 權限을 밝히는 27개항의 原則을 담고 있으나, 그 자체가 南北對決에서 온 折衷의 結果라는 점에서 鮮明성이 크게 退色한 것이 사실이다. 다만, 冷戰의 終熄에 따라 東西의 理念對決 없이 오로지 地球環境保護라는 人類 共同의 課題를 보다 眞摯하게 다룰 수 있는 기회가 되었다는 것은 높이 평가되는 점이다.

리오宣言이 담고 있는 內容 중에서 특히 중요한 것으로 볼 수 있는 것은 持續可能的 開發(sustainable development)原則의 확립, 開發主權의 인정, 環境影響評價制의 보편화, 國內環境立法의 촉구 및 事前豫防과 原因者負擔의 원칙의 천명 등이라고 할 수 있다. 그러나, 리오宣言은 그 多樣하고 合理的인 內容에도 불구하고 적지 아니한 法的 問題를 간직하고 있음을 부인할 수 없다.

리오宣言은 法的 拘束力이 없는 단순한 政治的 宣言(manifesto)의 일종인 것이어서, 그 內容의 效果的인 實現과는 실제로 거리가 먼 것임을 인정하지 않을 수 없다. 그 뿐만 아니라, '持續可能的 開發' 등에서 볼 수 있는 바와 같이 解釋上 論難의 여지가 많거나 廣範한 例外를 인정한 것들은 리오宣言의 效果的인 實行에 障礙要因이 될 것이 뻔

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한 일인 바, 이는 리오宣言이 先進工業國과 開發途上國間의 折衷의 産物이라는 데에서 빚어진 結果라고 아니할 수 없다.

결국, 리오宣言의 精神을 具顯하기 위하여는 相異한 社會經濟的 與件을 염두에 두고 實現可能한 最小限의 德目を 선택하여 法的 拘束力 있는 多者間協定을 成立시킨 다음, 段階的인 擴大 發展을 꾀할 일이라고 하겠다.

# LEGAL ASPECTS OF THE RIO DECLARATION

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### 1. INTRODUCTION

The Earth summit held from 3 to 14 of June, 1992, in Rio de Janeiro, Brazil, had adopted three major texts: the Rio Declaration on Environment and Development, Agenda 21, the Forest Principle, and two legally binding conventions: the Climate Change Convention and the Biodiversity Convention.

The Rio Declaration on Environment and Development set up 27 Principles defining the rights and responsibilities of States in the area of the global environmental protection. Although the text negotiated at the final meeting of the Preparatory Committee in May, 1992, was adopted without major change, the Rio Declaration was originally conceived as an "Earth Charter", a document the industrial-ized nations believed should stress the need to protect the environment. However, the Group 77 favoured a more detailed proclamation that reflect a greater balance between environment and development. The Rio Declaration is an

outcome of a great compromise between proposals made by industrialized nations and by Group 77 at the last moment of the preparatory Committee. This compromise has, to a certain extent, tainted the Declaration, in comparison with the UN. Declaration on Human Environment adopted under the cold war era in 1972. Since the Rio Declaration has no legal binding force, one of questions the Declaration is confronted with is its effective implementation. This survey is intended to look at some legal aspects of the Declaration in the context of its realization.

## 2. MAJOR CONTENTS OF THE RIO DECLARATION

As stated in the above, the Rio Declaration is an outcome of compromise of main proposals brought by G-77, by EC. and by US., and that made the Declaration more rusty than the one adopted in twenty years ago. The Declaration is composed of 27 principles outlining the right and responsibilities of states in the field of environment and development.

The Rio Declaration provides, among other things, that : States have "the sovereign right to exploit their own resources" as they pursue their environment and development policies but without causing damage to the environment of other states and areas beyond their border;

Environmental protection is "an integral part of the development process and cannot be considered in isolation from it" to achieve sustainable development;

Eradicating poverty and reducing disparities in worldwide standards of living are "indispensable requirement for sustainable development";

States should "reduce and eliminate unsustainable patterns of production and consumption and promote appropriate demographic policies;

States shall enact effective environmental legislation, and shall develop law regarding liability and compensation for environmental damage;

“Environmental impact assessment” shall be undertaken for activities having a significant adverse impact on the environment;

“The polluter should bear the cost of pollution in principle”;

States should prevent transboundary movements of activities and substances that endanger human health and/or environment ; and

Scientific uncertainty should not be a reason for postponing urgent measures to prevent environmental degradation.

The Rio Declaration, as seen in the above, stated those principles directly connected to the environmental matters and the Declaration, in that regard, is less loose style than the Agenda 21 that covers very wide range of policy matters regardless of direct or indirect impact to the environment.

### 3. LEGAL SIGNIFICANCE OF THE DECLARATION

It is quite meaningful that the Rio Declaration has, realizing growing seriousness of environmental problems after 20 year from Stockholm Declaration in 1972, adopted series of principles defining the rights and responsibilities of States to protect the human environment. Among others, it is noteworthy from legal stand points that number of important legal principles in the area of environmental law have been incorporated, and those principles are 1) defining the concept of sustainable development, 2) recognizing the sovereign right of states to exploit their own resources, 3) stressing the responsibility of states to enact effective environmental legislation, 4) confirming precautionary doctrine and polluter pays principle, and 5) adopting environmental impact assessment as an international system.

Principles pointed out in the above reflect legal ideas incorporated in the

### Rio Declaration.

It is quite significant that an international consensus has been made on those legally important environmental principles, although they have no legal binding force.

Firstly, the Declaration has fixed the concept of sustainable development which was the key idea of the Earth Summit. The concept came from a growing worry that the Earth will be too desolate to bear the creatures unless a development keeps recoverable phase. It means economic models must be shifted from a pattern of resource waste or resource destruction to that of resource recycle or resource conservation. Yet, the concept of sustainable development may bring a disorder in a course of its interpretation and operation as long as conflict of national interests exist or as long as concrete and detailed follow-up scheme is not implemented.

The next question is concerned to sovereign rights to exploit national resources. Principle 2, a reflex of developing countries proposal, affirms sovereign right of states to exploit their resources, and Principle 6 encourages to give special priority for the special situation and needs of developing countries. These principles may contribute to open up a road to reckless drive forward development in the name of sustainable development, though the Declaration provides some restrictions.

Needless to stress, environmental problems are largely rely on the national will, and the national will is expressed by a legislative enactment. In this context, Principle 11 that clearly states obligation of states to enact effective environmental legislation is a posture gained by the international consensus.

In all respects, a precaution overrides *ex post facto* measures, and Principle 15 that states the precautionary doctrine may be rated high in that sense. However, the phrase "according to their capabilities" attached

as a condition to the doctrine may be a matter of grave concern in terms of effective implementation of the doctrine. And, a polluter pays principle stated in Principle 16 has widely been accepted in many countries already, and it is significant in a sense that the principle has been adopted as a general rule in the international society. It is specially noteworthy that Principle 16 clearly stated a polluter pays principle may not be applied to distort international trade and investment.

Lastly, environmental impact assessment, as generally understood, is one of effective tools to maintain a balanced development in connection with the environmental preservation. In that context, Principle 17 requesting states to undertake environmental impact assessment is certainly in order in connection with sustainable development. As has been seen in the above, the Rio Declaration contains number of legally significant environmental principles, though it is doubtful whether they are successfully carried out.

#### 4. FEASIBILITY OF THE DECLARATION

There are number of unconvincing points about feasibility of the Declaration. One of them is that the Declaration is a mere manifesto and has no legal binding force, as has been already mentioned. Therefore, implementation of the Declaration has to rely on spontaneous act of concerned states, or on follow-up agreements. Secondly, there are potential obstacles to effective implementation of the Declaration. Those are concerned to interpretation of principles and preconditions attached to principles. As has been pointed out in the beginning, the Declaration used number of ambiguous terms in connection with important principles and provided wide exceptions with regard to the main framework, as a natural consequence of compromise between industrialized nations and developing countries.

And, in despite of the largest-ever gathering of world leaders from more than 100 nations, the Earth Summit could not solve the confrontation between the North and South, and could not keep steps on funding matter, namely UN target of 0.7% of GNP, for ODA, by the year of 2000. It is generally conceded that a feasibility of any legal norm requires a similarity of socio-economic status of a given society subject to any law. In this context, it is doubtful whether the Rio Declaration has real feasibility in this world circumstances.

## 5. CONCLUSION

In view of an international consensus on the desirable directions to preserve the only Earth has been achieved and committed to writing, the Rio Declaration has a significant meaning, although the Declaration, as in a case of Agenda 21, had been weakened by compromise and negotiation.

It is an obvious fact that an age when development dominates environment has passed and environment directs development from now on. It, however, is also inevitable to face up the reality of confrontations between a serious problem of developing countries where an urgent matter is a bread of today than the clean environment of tomorrow versus a great concern of environmental problems in the industrialized nations who has caused environmental issues in the course of achieving their prosperity. The Rio Declaration need to evolve toward a true "Earth Charter". Taking into account of abovementioned points, it may, replacing conclusion, be suggested as follows:

Firstly, minimum and imminent directions for environmental preservation shall be set up and vest a legal binding force,

Secondly, consideration and prescriptions on the international environmental law shall not be a wholesale manner, but shall reflect



different socio-economical conditions,

Thirdly, environmental technologies and informations shall be exchanged and be shared one another on noncommercial basis, and

Lastly, funding responsibilities for global environmental preservation shall equitably set up in line with gain through development.

In concluding, it is noteworthy that "We simple do not have another twenty years to squander. We have to make sure that the road from Rio is a fast track", as mentioned by Mr. Maurice Strong, Secretary-General of UNCED.