

# TWO MAJOR CHALLENGES OF OUR TIME: HUMAN RIGHTS AND THE ENVIRONMENT\*

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It is nowadays widely accepted that international life has been dramatically transformed under the overwhelming pressure of two major challenges of our time: the necessities and requirements of protection of the human person and of protection of the environment. The widespread violations of human rights during World War II have led to a general feeling of revolt which has resulted in the solemn recognition of the paramount value of fundamental human rights and freedoms. Likewise, the deterioration of the environment, due in the industrialized world mainly to imbalances of economic growth and aggravated in developing countries by poverty and the problems of population growth, has precipitated a new awareness of the value of the environment and its component resources.

The consequent evolutions of human rights protection and environmental protection in recent years inevitably led to the gradual erosion of the so-called reserved domain of States. In the years following the 1948 Universal Declaration of Human Rights and in those following the 1972 Stockholm Declaration on the Human Environment, respectively, there occurs a multiplicity of successive international instruments in the two domains of protection. They both undergo a process of internationalization, that of

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human rights antedating that of the environment in time. One and the other become matters of international concern. They both indicate that there could hardly remain matters not susceptible of regulation at international level.

The recognition of both human rights and the environment as common superior values took place initially by means of non-binding, so-called "soft law" instruments. Indeed, when new values emerge, they need first to be so formulated as to pave the way for future developments in the form of binding instruments. In this respect the evolution in human rights protection has gone further than in environmental protection. At normative level, e.g., treaties with a general scope, such as the U.N. Covenants on Civil and Political, and Economic, Social and Cultural Rights, respectively, as well as the three regional (European, American and African) Conventions on Human Rights were successively adopted, while there is to date no similar world-wide convention imposing everywhere the respect of the environment. Indeed, existing conventions in this field are either world-wide but limited in their subject matter (oceans, international trade in species, ozone layer, transboundary movements of hazardous wastes, etc.), or, even if they cover the whole field of environmental protection, they are else limited in their geographical scope of application (Africa, South-East Asia). It would be desirable if a world-wide Covenant were here achieved as it has been in the field of human rights.

However, a piecemeal approach can also be perceived in the field of human rights. One has here numerous instruments turned to the protection of certain categories of persons, or of individuals in certain conditions or under certain circumstances (e.g., workers, women, children, refugees, stateless persons, discriminated persons or groups, minorities, etc.). However, those instruments are necessarily complementary to the above-mentioned human rights treaties with a general scope. There results, in the two domains of human rights and the environment, a rather complex normative corpus, and rather fragmented one, as international instruments were adopted successively as *responses to the needs of protection*.

At institutional level the distinct rhythms of evolution become even more noticeable. In the field of human rights one has witnessed the establishment of successive international supervisory organs at global and regional levels in the process of generalization of protection. Again this evolution has gone much further here than in the field of the environment. Perhaps this latter could benefit considerably from the experience accumulated in the field of human rights protection in this respect, by establishing adequate institutions and procedures in order to secure the implementation of existing norms.

In so far as the actors are concerned, in the protection of the human person one can find traces of interstate action in earlier antecedents of humanitarian action. In the protection of the environment likewise, traces of a bilateral approach can be found in early transfrontier pollution cases, such as those of *Trail Smelter* (11 March 1941) and *Corfu Channel* (3 April 1949). But soon it became evident that action at a purely interstate level and a strictly bilateral approach were insufficient, if not inappropriate. Hence the emergence of the transsectoral approach in international environmental regulation (with the growth of awareness that pollution problems can move from one side of the frontier to another), and the consequent attention to issues which can affect distinct countries and populations at the same time (e.g., toxic and dangerous, and radioactive, substances or wastes).

All this has been followed by the more recent emergence of *global* environmental issues, such as climate change and biological diversity, pursuant to a universal approach. This has promoted a better understanding of the fact that there is undoubtedly a *common concern of mankind*. As heralded by the UN Charter and the Universal Declaration of Human Rights, the observance of human rights world-wide is likewise a *common concern of mankind*. The interrelatedness of all human rights (civil and political, and economic, social and cultural) is today widely acknowledged pursuant to a global or universal approach.

Another common point is the preventive dimension of both realms of protection. Here the contribution of environmental law is considerable, prompted by the need to avoid irreversible harm or even environmental deterioration which can hardly be remedied. Indeed, the whole of environmental law is in a way preventive in character. This attitude has lately been taken also in the field of human rights protection, as indicated by recent jurisprudence of the two regional (European and Inter-American) Courts of Human Rights.

The convergences and the growth of internationalization of the two domains of protection bring about a problem common to both, namely, that of the needed coordination of so many instruments of protection, both at international and national levels. To the co-ordination of international organs one can add the need for harmonized national legislation and co-ordinated national measures of implementation, in conformity with the provisions of relevant treaties and instruments.

One of the main convergences between the two domains of protection can be found in the new conception of the fundamental rights to life and to health, as comprising negative measures of respect as well as positive measures of promotion and protection. Such fundamental rights lie in fact

as the basis of the rationale of both human rights protection and environmental protection. The right to a healthy environment, as expressly recognized nowadays in the 1988 Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social, Cultural Rights (Article 11) and in the 1981 African Charter on Human and Peoples' Rights (Article 24), expresses the approximation between the two realms of protection. The right to a healthy environment can benefit from the implementation of "pre-existing" rights, just as it in turn can reinforce the implementation of these latter, in this way enriching and helping to develop the *corpus juris* of international human rights law, giving it a wider dimension.

The approximation between human rights protection and environmental protection is further called for by the injustice perpetrated by the grave inequalities of the *conditions of life* among human beings as among nations. This injustice is reflected in, and further aggravated by, environmental degradation. Today, large segments of populations, and in particular the poorer ones, have to endure the evil consequences for human life and human health of living -or rather, surviving- in a polluted environment, often in subhuman or even inhuman conditions. The belts of poverty and misery, surrounding large cities in Latin America and in other regions of the so-called Third World, nowadays are an eloquent and disturbing illustration of this reality. The endeavors towards the recognition and implementation of the right to a healthy environment may have a *democratizing effect*, in that such right may contribute to reduce those inequalities to the extent that it purports to assert and protect the right of *all human beings* -irrespective of socio-economic conditions- to a healthy environment.

But one can go further than that. The right to benefit from a healthy environment in only an aspect -and a rather passive one- of a complex web of multiple legal relationships. Such a right of *jouissance* also discloses some *democratic requirements*, or active aspects. It presupposes, for example, a free and responsible society where everyone has access to information (general as well as specific information), including that which has a direct bearing on environmental conservation. Of paramount importance here are the right of democratic participation as well as the right to effective remedies. Suffice it to recall that it was in the dark times of dictatorships and authoritarian regimes that most harm was done to human rights and the environment.

Sustained and strengthened democracy is a pre-condition for environmental and human rights protection and sustainable development. This latter is the result of the former. Participating democracy constitutes another element of approximation -and a most significant one- between human rights protection and environmental protection. The right of democratic participation entails individual responsibility, it in fact engages the

responsibility of everybody - States as well as individuals and their associations - in the sense of the 1982 World Charter for Nature and of the 1986 U.N. Declaration on the Right to Development.

Moreover, democratic practices cannot be confined within national borders. They must also be followed at international level by all countries in sharing the burdens according to their capacities, as well as by international financial agencies in assuming responsibility to prevent economic recession and unemployment and their negative impact upon economic, social and cultural rights and consequent implications for the environment as a whole. Human rights protection, environmental protection and sustainable development are to be pursued together in order to face and overcome the major challenges of our time.

## ANNEX

### DRAFT DECLARATION OF PRINCIPLES OF HUMAN RIGHTS AND THE ENVIRONMENT (1994)\*

#### PREAMBLE

*Guided by the United Nations Charter, the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, the Vienna Declaration and Program of Action of the World Conference of Human Rights, and other relevant international human rights instruments,*

*Guided also by the Stockholm Declaration of the United Nations Conference on the Human Environment, the World Charter for Nature, the Rio*

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\* On 16-18 May 1994, an international group of experts on human rights and environmental protection convened at the United Nations Office in Geneva and drafted the first-ever declaration of principles on human rights and the environment. The Geneva group of experts met at the invitation of the Sierra Club Legal Defense Fund on behalf of Madame Fatma Zohra Ksentini, special Rapporteur on Human Rights and the Environment for the United Nations Sub-Commission on Prevention of Discrimination and Protection of Minorities.

The Draft Declaration is the first international instrument that comprehensively addresses the linkage between human rights and the environment. It demonstrates that accepted environmental and human rights principles embody the right of everyone to a secure, healthy and ecologically sound environment. The Draft Declaration describes the environmental dimension of established human rights, such as the rights to life, health and culture. It also describes the procedural rights, such as the right to participation, necessary for realization of the substantive rights. The Draft Declaration also describes duties that correspond to the rights—duties that apply to individuals, governments, international organizations and transnational corporations.

Declaration on Environment and Development, Agenda 21: Programme of Action for Sustainable Development, and other relevant instruments of international environmental law,

*Guided also by* the Declaration on the Right to Development, which recognizes that the right to development is an essential human right and that the human person is the central subject of development,

*Guided further by* fundamental principles of international humanitarian law,

*Reaffirming* the universality, individuality and interdependence of all human rights,

*Recognizing* that sustainable development links the right to development and the right to a secure, healthy and ecologically sound environment,

*Recalling* the right of peoples to self-determination by virtue of which they have the right freely to determine their political status and to pursue their economic, social and cultural development,

*Deeply concerned by* the severe human rights consequences of environmental harm caused by poverty, structural adjustment and debt programmes and by international trade and intellectual property regimes,

*Convinced that* the potential irreversibility of environmental harm gives rise to special responsibility to prevent such harm,

*Concerned that* human rights violations lead to environmental degradation and that environmental degradation leads to human rights violations,

The following principles are declared:

## **PART I**

1. Human rights, an ecologically sound environment, sustainable development and peace are interdependent and indivisible.
2. All persons have the right to a secure, healthy and ecologically sound environment. This right and other human rights, including civil, cultural, economic, political and social rights, are universal, interdependent and indivisible.
3. All persons shall be free from any form of discrimination in regard to actions and decisions that affect the environment.

4. All persons have the right to an environment adequate to meet equitably the needs of present generations and that does not impair the rights of future generations to meet equitably their needs.

## PART II

5. All persons have the right to freedom from pollution, environmental degradation and activities that adversely affect the environment, threaten life, health, livelihood, well-being or sustainable development within, across or outside national boundaries.
6. All persons have the right to protection and preservation of the air, soil, water, sea-ice, flora and fauna, and the essential processes and areas necessary to maintain biological diversity and ecosystems.
7. All persons have the right to the highest attainable standard of health free from environmental harm.
8. All persons have the right to safe and healthy food and water adequate to their well-being.
9. All persons have the right to a safe and healthy working environment.
10. All persons have the right to adequate housing, land tenure and living conditions in a secure, healthy and ecologically sound environment.
11. All persons have the right not to be evicted from their homes or land for the purpose of, or as a consequence of, decisions or actions affecting the environment, except in emergencies or due to a compelling purpose benefitting society as a whole and not attainable by other means.

All persons have the right to participate effectively in decisions and to negotiate concerning their eviction and the right, if evicted, to timely and adequate restitution, compensation and/or appropriate and sufficient accommodation or land.

12. All persons have the right to timely assistance in the event of natural or technological or other human-caused catastrophes.
13. Everyone has the right to benefit equitably from the conservation and sustainable use of nature and natural resources for cultural, ecological, educational, health, livelihood, recreational, spiritual or other purposes. This includes ecologically sound access to nature.

Everyone has the right to preservation of unique sites, consistent with the fundamental rights of person or groups living in the area.

14. Indigenous peoples have the right to control their lands, territories and natural resources and to maintain their traditional way of life. This includes the right to security in the enjoyment of their means of subsistence.

Indigenous peoples have the right to protection against any action or course of conduct that may result in the destruction or degradation of their territories, including land, air, water, sea-ice, wildlife or other resources.

### **PART III**

15. All persons have the right to information concerning the environment. This includes information, howsoever compiled, on and information necessary to enable effective participation in environmental decision-making. The information shall be timely, clear, understandable and available without undue financial burden to the applicant.
16. All persons have the right to hold and express opinions and to disseminate ideas and information regarding the environment.
17. All persons have the right to environmental and human rights education.
18. All persons have the right to active, free, and meaningful participation in planning and decision-making activities and processes that may have an impact on the environment and development. This includes the right to a prior assessment of the environmental, developmental and human rights consequences of proposed actions.
19. All persons have the right to associate freely and peacefully with others for purposes of protecting the environment or the rights of persons affected by environmental harm.
20. All persons have the right to effective remedies and redress in administrative or judicial proceedings for environmental harm or the threat of such harm.

### **PART IV**

21. All persons, individually and in association with others, have a duty to protect and preserve the environment.



22. All States shall respect and ensure the right to a secure, healthy and ecologically sound environment. Accordingly, they shall adopt the administrative, legislative and other measures necessary to effectively implement the rights in this Declaration.

These measures shall aim at the prevention of environmental harm, at the provision of adequate remedies, and at the sustainable use of natural resources and shall include, *inter alia*,

- collection and dissemination of information concerning the environment;
  - prior assessment and control, licensing, regulation or prohibition of activities and substances potentially harmful to the environment;
  - public participation in environmental decision-making;
  - effective administrative and judicial remedies and redress for environmental harm and the threat of such harm;
  - monitoring, management and equitable sharing of natural resources;
  - measures aimed at ensuring that transnational corporations, wherever they operate, carry out their duties of environmental protection, sustainable development and respect for human rights; and
  - measures aimed at ensuring that the international organizations and agencies to which they belong observe the rights and duties in this Declaration.
23. States and all other parties shall avoid using the environment as a means of war or inflicting significant, long-term or widespread harm of the environment, and shall respect international law providing protection for the environment in times of armed conflict and cooperate in its further development.
24. All international organizations and agencies shall observe the rights and duties in this Declaration.

## **PART V**

25. In implementing the rights and duties in this Declaration, special attention shall be given to vulnerable persons and groups.

26. The rights in this Declaration may be subject only to restrictions provided by law and which are necessary to protect public order, health and the fundamental rights and freedoms of others.
27. All persons are entitled to a social and international order in which the rights in this Declaration can be fully realized.

**International Group of Experts on Human Rights and the Environment  
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