

Sustainable Development and Human Rights

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When one has to speak on a subject, it is always useful to begin by analysing its formulation. Here, our title is "Sustainable Development and Human Rights" which appears to include two main elements: sustainable development on one hand, human rights on the other. However, a more careful look indicates that there are not two, but three main poles in this problem, since the concept of sustainable development itself includes two elements: development and sustainability. The latter leads directly to the environment and raises the problem of its protection. Indeed, development cannot be sustainable without conserving the resources which our environment ensures with its lifesupporting systems, biological diversity and ecological equilibrium. As formulated in the Preamble of the World Charter for Nature:

"Mankind is a part of nature and life depends on the uninterrupted functioning of natural systems which ensure the supply of energy and nutrients".⁽¹⁾

We can envisage a triangular relationship between the three poles: Development, Environment and Human Rights. A similar approach has been adopted by Ms. Brundtland, President of the U. N. Commission on Environment and Development who wrote of the well-known Report of that Commission:

"The overriding political concept upon which our report is founded is that of sustainable development, a broad concept for social and economic progress. We define it as paths of human progress that meet the needs and aspirations of the present generation without compromising the ability of future generations to meet their needs. It requires political reforms, a fair access to knowledge and resources, and a more just and equitable distribution within and among nations".⁽²⁾

Thus, before attempting a synthesis, we will study the relationship between the three poles of this triangle on which the future of mankind depends:

(1) The World Charter for Nature was adopted and solemnly proclaimed by the U. N. General Assembly on 28 October 1982, UNGA Res. 37.7.

(2) Our Common Future, in UNEP, *Earth and Us*, Butterworth-Heinemann, 1991, p. 29.

development and environment, development and human rights, environment and human rights.

I. Development and Environment

At the beginning of the "ecological era" that led to the 1972 Stockholm Conference on Human Environment, which was the first landmark in the development of world action for environmental protection, representatives of the Third World were rather hesitant about joining the movement. Many of them were wanting to become industrialized above all and ignored environmental issues, considering that deterioration in this field was mainly a problem for rich countries. The priorities are reflected in the comment of one Third World representative who exclaimed: "let me die polluted".

However, during the Stockholm Conference itself, which very seriously took into consideration the point of view of developing countries and especially during the years following, Third World attitudes towards the problem of development and environment have changed. There are several reasons for this evolution. First, the frequent link between deterioration of the environment, and poverty and its consequences, has become obvious: pollution from urban growth, problems of water resources, erosion, floods, desertification and deforestation, all harm developing countries more than industrialized nations. Second, the natural resources of poor countries risk bearing the cost of unregulated development. Third, as is shown by Professor Shelton's presentation on the right to food, health, nutrition and the general wellbeing of Third World peoples depend on the integrity and productivity of the environment and the compatibility of the development process with the imperatives of conservation. Fourth, poor countries increasingly have realized the dangers of the "exportation of pollution", i.e. the exportation of dangerous products prohibited or regulated in industrialized states and the dumping of industrial waste products, as well as installation of dangerous industrial operations in countries having weak protective measures, which are generally developing ones.

This awareness is reflected in a way by the Declaration of Brasilia adopted on March 31, 1989 by Latin American and Caribbean countries which condemns the industrial origin of pollution and adds that the signatory countries are "committed to a course of action that will be able to prevent a repetition of the mistakes of those development patterns and their consequences".⁽³⁾ The need to integrate environmental protection in the development process is also stressed very strongly in the fourth Lomé Convention between the European Economic Community and the African, Caribbean and Pacific States (ACP), signed on

(3) Reproduced in *International Legal Materials* vol. 28, 1989, p. 1303.

December 15, 1989.⁽⁴⁾ Indeed, one of the titles of the treaty is specifically devoted to the environment and conservation of natural resources, which are deemed to be fundamental objectives sought by the ACP States with the support of the EEC.

Today, on the whole, the participation of Third World countries in global legal instruments tending to protect the environment is comparable to that of industrialized States. There are also two general conventions on environmental protection concluded by developing countries: the African Convention (Algiers, September 15, 1968) and the ASEAN agreement (Kuala Lumpur, July, 1985).

Thus, a very close relationship between development and environment is generally recognized both by industrialized and developing countries. This is also the main issue for the 1992 Rio de Janeiro Conference.

II. Development and Human Rights

It is not necessary to insist on the links between human rights and development. All economic and social rights are strictly dependent on development. A review of the different rights guaranteed by the U.N. Covenant on Economic, Social and Cultural Rights of 16 December 1966, in the light of development demonstrates its significance in this regard.

- The right of self-determination which includes the right to freely pursue economic, social and cultural development (Art. 1.(1)). Thus, the right to freely take decisions concerning the process of development or the right to development itself can be considered as one of the components of the "right to self-determination".

- Developing countries may determine to what extent they would guarantee the economic rights recognized in the Covenant, but they must have due regard to human rights (Art. 2 (2)). Thus the development process cannot ignore economic, social and cultural rights, the realization of which must be the aim of the development.

- Limitations to rights can be imposed by the States in conformity with the Covenant, but only insofar as this may be compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society (Art. 4). This means that the development process is bound to respect the guaranteed rights unless the major interests of the general welfare are at stake. But again, one may think that the general welfare includes the enjoyment of a healthy and well-balanced environment.

(4) 29 *ILLM.* 783 (1990). The participants in this treaty include 69 developing countries and the 12 Member States of E.E.C.

While most of these general provisions only implicitly relate to development, the relationship between development and almost all the guaranteed rights is evident. In particular, this is the case of the following:

- the right to work (Art. 6 (1));
- the right to technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development (Art. 6 (2));
- the right to just and favourable conditions of work including an adequate remuneration, safe and healthy working conditions, equal opportunity for everyone to be promoted and to rest and holidays (Art. 7);
- the right to social security, including social insurance (Art. 9);
- protection and assistance to the family and especially protection and assistance to mothers and children (Art. 10);
- right of everyone to an adequate standard of living including adequate food, clothing and housing (Art. 11);
- commitment of the States to take measures to improve methods of production, conservation and distribution of food by making full use of technical and scientific knowledge and by disseminating knowledge in such a way as to achieve the most efficient development (Art. 11 (2) (a));
- the right to health, defined in article 13, very clearly supposes the development of poor countries: it implies the reduction of the level of stillbirths and of infant mortality, the prevention, treatment and control of diseases, the creation of conditions which would assure to all medical service and medical attention in the event of sickness (Art. 12);
- the right to education is described in detail in Articles 13 and 14: its implementation needs important material and personal means which can only be ensured by economic and social development.

A similar analysis could be made of the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, adopted at San Salvador on November 14, 1988, concerning the right to work (Article 6) and to just, equitable and satisfactory working conditions (Article 7); the right to social security (Article 9); the right to health (Article 10); the right to food (Article 12); the right to education (Article 13); the right of protection of the family (Article 15) and the rights of children to the protection that they must be accorded by the society and the state (Article 16), as well as the right to special protection for the elderly (Article 17) and the handicapped (Article 18). The African Charter on Human and Peoples' Rights, adopted at Nairobi on June 26, 1981, although less detailed on these points, also guarantees economic, social and cultural rights, the implementation of which depends on development: right to work (Article 15); right to enjoy the best attainable state of physical and mental health (Art. 16); right to

education (Art. 17); assistance to families and right of the disabled and the aged to special measures of protection (Art. 18).

Similarly, civil and political rights, guaranteed by the Covenant parallel to the one which has been analysed, are sometimes explicitly, sometimes implicitly, linked with development. They are treated in another presentation at this Seminar.

Of course, the problem of the relationship between human rights and development also raises the question of the right to development which has often been claimed as one of the new human rights. The right to development was first formulated in the African Charter on Human and Peoples' Rights of June 26, 1981. Article 22 of this instrument proclaims that:

"1. All peoples shall have the right to their economic, social and cultural development with due regard to their freedom and identity and in the equal enjoyment of the common heritage of mankind.

2. States shall have the duty, individually or collectively to ensure the exercise of the right to development."

The concrete meaning of this provision and in general of the right to development has been discussed often. The main objection to its universal adoption is that it cannot be implemented by ordinary means of law. Indeed, it is difficult to know who is the beneficiary of this right, defined as "all peoples" - or even "peoples". The term "people" can be understood as signifying the whole population of a State, or only parts of it - e. g. ethnic or linguistic groups. These last may have no legal representation, even if they can be defined, and thus cannot claim the implementation of their right to development. Thus, the first interpretation, when "people" means the population of a State, is more plausible from a legal point of view. Compared to the second paragraph of Article 22 proclaiming the duty of States, *individually or collectively* to ensure the exercise of the right to development, it means two things. First, the State itself, i.e. its Government, is obliged to implement this right. When a Government of a poor country or its members appropriate its resources for personal purposes, they certainly violate the right of the people to development and could thus be accused of such violation. On the other hand, this provision also speaks of the duty of the international community to ensure the exercise of the right to development - this is the meaning of the word "collectively". However, since the African Charter is a regional Convention, its scope only extends to its States Parties, which are African States, all of them developing countries.

The San Salvador Protocol to the American Convention on Human Rights, only contains a mention of the right to development in its preamble, although its signatories are developing countries.⁽⁵⁾

(5) "Bearing in mind that, although fundamental economic, social and cultural rights have been recognized in earlier international instruments of both world and regional scope, it is essential that those rights be reaffirmed, developed, perfected and protected in order to consolidate in America, on the basis of full respect for the rights of the individual, the democratic representative form of

Whatever the territorial scope and the significance of the "right to development" may be, it is certain that there is a strong link between human rights and development, especially as far as economic, social and cultural rights are concerned.

III. Human Rights and Environment

Since the beginning of the 1970s the convergences between human rights and environment have become clearer. At a first stage, in international instruments related to human rights the relationship was mainly implicit. Perhaps the generalized awareness of the necessity to protect the environment which characterizes the last twenty years has helped to reveal environmental implications of several provisions. Certainly, when we speak today of the general welfare in a democratic society (Article 4 of the U.N. Covenant on Economic, Social and Cultural Rights), we cannot exclude environmental aspects of this welfare, which has become inconceivable in heavily polluted areas. Reactions might be the same when we read Article 7 of the same Covenant related to safe and healthy working conditions or Article 11(1) which recognizes the right of everyone to an adequate standard of living for himself and his family.

More explicit are the provisions that include the commitment to achieve the most efficient development and utilization of natural resources - which can be interpreted as corresponding to the subsequent idea of sustainable development - and above all the obligation to improve all aspects of environmental and industrial hygiene (Article 13 (2) (b)). The latter provision is the very basis on which the first links between human rights and environment were established and even which was considered as the foundation of a "right to environment".⁽⁶⁾

In the other international treaties related to economic, social and cultural rights such implications may not be as easy to establish as in the U.N. Covenant. However, these instruments overtly proclaim the right to environment. Article 24 of the African Charter of Human and Peoples' Rights proclaims that:

"All peoples have the right to a general satisfactory environment favourable to their development".

Also on the regional level, the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights contains an Article 11 according to which:

government as well as the rights of its peoples to development, self-determination, and the free disposal of their wealth and natural resources..." (28 *I. L. M.* 161, 1989).

- (6) Pierre-Marie Dupuy, *Le droit à la santé et la protection de l'environnement*, *Colloque de l'Académie de droit international: Le droit à la santé en tant que droit de l'homme*, La Haye, 27-29 juin 1978, Sijthoff, 1979, pp. 350-351.

"1. Everyone has the right to live in a healthy environment and to have access to basic public services.

2. The States Parties shall promote the protection, preservation and improvement of the environment".

The "right to environment" is thus recognized in two of the three existing regional human rights treaties. In the framework of the third, the European Convention of Human Rights, which was drafted at a period when even the word "environment" was unknown, the European Court of Human Rights has recognized that environmental protection is a major preoccupation of present society which can motivate the limitation of individual rights.⁽⁷⁾

On the environmental side of the picture, the Stockholm Declaration on the Human Environment, of June 1972, proclaims in its very first principle that:

"Man has the fundamental right to freedom, equality and adequate conditions of living in an environment of a quality that permits a life of dignity and well-being..."

Ten years later, the World Charter for Nature⁽⁸⁾ implicitly developed this principle by insisting on the duty of States but also on the right and the responsibility of individuals to participate in the protection of the environment. These principles also have been included in the constitutions of more than 40 States and practically no new national constitution or constitutional modification adopted since the beginning of the 1970s ignores the "right to environment".⁽⁹⁾ There is also a strong movement in public opinion for the universal proclamation of a "right to environment"⁽¹⁰⁾ which would include the right to environmental information - especially the right to be informed of the modifications of one's environment - the right to participate in decisions concerning such matters and the right to means of redress for the violation of the procedure thus described or for damage to the environment.

We will come back in our conclusions to this convergence between environmental protection and human rights in the existing legal provisions, both

(7) *Fredin case*, February 18, 1991, 29/1989/189/249, par. 48-55.

(8) See footnote 1.

(9) Alexandre Kiss, *Le droit à la conservation de l'environnement*, 2 *Revue universelle des droits de l'homme*, no. 12, p. 445-448 (1990). See also two collective works on this much discussed subject: P. Kromarek et alii, *Environnement et droits de l'homme*, UNESCO, Paris, 1987, and *Le droit à la qualité de l'environnement: un droit en devenir, un droit à définir*, Ve Conférence internationale de droit constitutionnel, Québec/Amérique, 1988.

(10) See the Conclusions of the CSCE meeting of Sofia, 16 October to 3 November 1989; the European Charter on Environment and Health adopted by the first European WHO Conference on December 8, 1989; the Draft ECE Charter on Environmental Rights and Obligations, Oslo, 31 October 1990 and also the Preliminary Report prepared by Ms. Fatma Ksentini, special rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities of the U.N. Commission of Human Rights, Aug. 2, 1991, Doc. E/CN. 4/Sub. 2/1991/8.

universal and regional, whether mandatory or not. Such mutual influence also exists in the facts. Some of them are alluded to in different presentations of this Seminar, but they still may be stressed here in order to have a complete picture of the relationship between human rights and environment.

The state of the environment has necessarily an impact on the implementation of human rights: the right to food illustrates this. One may add that the depletion of natural resources also has an influence on the exercise of other economic and social rights: housing, clothing, education, and, of course, the standard of living in general. Another consideration must be added: if we cannot escape the "greenhouse effect" by adopting adequate measures on time, the consequences for the life on Earth will be profound and will be disastrous for certain populations. The term "environmental refugees" which has appeared as a consequence of drought, desertification and the consequent food shortage, could have a much larger meaning with millions of peoples leaving areas flooded by the sea or regularly submitted to natural disasters, such as tropical storms.

On the other hand, the respect of fundamental rights and freedoms is essential for effective environmental protection. Many examples show that dictatorial regimes are the worst enemies not only of freedoms, but also of the environment. Some pictures coming from formerly communist countries or from Third World dictatorships illustrate the devastations which may result from authoritarian governments. The refusal of information and of participation to citizens in environmental matters, which could be a guarantee in this field characterize such regimes. They are also responsible for most civil wars - or even international hostilities - which devastate the environment. The ignorance of the rights of women, who generally are more sensitive for their environment than men and the refusal to take their opinion into consideration⁽¹¹⁾ are other points on which the violation of human rights has an impact on the state of the environment. Finally, the increase of the world population which might annihilate all perspective of development, of environmental protection and of respect for human beings cannot be ignored.⁽¹²⁾

This list could be continued and certainly it will be enlarged in other presentations. Let us come now to several conclusions.

(11) Gro Harlem Brundtland, p. 36 (note 2).

(12) "The world today should clearly understand that an increase in population demands an increase in both food and energy requirements, resulting in increased environmental degradation if not carefully managed. The chief cause of environmental degradation is, therefore, population growth because of the pressure it puts on land-use and other requirements such as energy". Kenneth D. Kaunda, Environment and Development, in *Earth and Us* (note 2), p. 1 at p. 7.

Conclusions

In the changing world of the second half of the 20th century two major values have emerged: fundamental human rights and freedoms on one side, environment on the other. Both must be protected by law, the objective of which is to protect fundamental social values. Both must be approached at the international level. Thus, such protection is the task of international law.

In theory, this task was relatively easy as far as human rights are concerned. Of course, state sovereignty had to be curtailed, but well-known treaty-making processes could be used, even if in some cases - concerning mainly economic, social and cultural rights - the adopted rules contained more objectives and commitments for the future rather than real legal obligations. The situation changed with environmental protection, where law has to take into account not only its usual objects but also processes and systems. Development is even harder to formulate in legal terms: outside its political nature, it also includes processes and it has a strong economic component. The three poles of the triangle human rights - environment - development cannot be treated in the same way by international law, some are weaker than others.

This weakness can be, however, remedied by pulling the three together. International principles related to development and, indeed, the whole process of development are reinforced by integrating into them the point of view of environmental protection: sustainable development is a major contribution to development. Most of the incredibly numerous positive law rules in international environmental law support development when the latter is understood in this way. Present trends in international environmental negotiations show the possibility to improve international cooperation in the field of development when environmental objectives are at stake. In this regard, the London amendments to the Montreal Protocol on the protection of the ozone layer were a real breakthrough, since they express the principle that industrialized countries must give financial and technological assistance to developing ones in the defence of the global environment. Finally, international human rights law, which is the most developed of the three fields, having elaborated a complete set of rules and having set up largely accepted structures and mechanisms for their implementation, can give a real support to the whole construction. One of the benefits of the close links between the three poles could be to develop rules and mechanisms in the field of sustainable development which could be inspired by those which exist and become more and more efficient in international human rights law. On the other hand, methods of evaluation and surveillance of given activities, as well as concepts such as the right of future generations, or the global approach to problems, which have emerged with environmental law and sustainable development, could have a beneficial influence on the protection of human rights. The triangle human rights-environment-development may be seen as the magic key to our future universe.