

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 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 wasters, 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 a rather fragmented one, as international instruments were adopted successively as *responses to the needs of protection*.

At institutional level the distinct rythms 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 wasters).

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 worldwide 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 co-ordination 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 at 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 and among nations. This injustice is reflected in, and further aggravated by, environmental degradation. To-day, 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 endeavours 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 is 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 are here 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.