Human Rights, Sustainable Development and Environment

Direitos Humanos, Desenvolvimento Sustentável e Meio Ambiente

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ANTÔNIO AUGUSTO CANÇADO TRINDADE
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Derechos Humanos, Desarrollo Sustentable y Medio Ambiente

2da Edición - 2nd Edition

Edith BROWN WEISS
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DE DERECHOS HUMANOS

BANCO
INTERAMERICANO
DE DESARROLLO

San José de Costa Rica, 1995

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ANTÔNIO AUGUSTO CANÇADO TRINDADE (Editor)

Derechos Humanos, Desarrollo Sustentable y Medio Ambiente

Human Rights, Sustainable Development and the Environment

Direitos Humanos, Desenvolvimento Sustentável e Meio Ambiente

(Seminário de Brasília de 1992)

Conferencias/Lectures

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PREFACIO A LA SEGUNDA EDICION

Derechos humanos, desarrollo sustentable y medio ambiente: pocos son los temas que vienen ocupando tanto espacio en la agenda internacional contemporánea como los que componen esta trilogía. Estos temas se encuentran íntimamente relacionados entre sí, y vienen formando, cada uno con mayor o menor énfasis, el denominador común del gran ciclo de Conferencias Mundiales de este final de siglo desencadenado por la Conferencia de las Naciones Unidas sobre Medio Ambiente y Desarrollo (Río de Janeiro, 1992). Han ocupado un lugar central en las tres grandes Conferencias del género realizadas hasta el presente - la referida Conferencia de Río de 1992, la II Conferencia Mundial de Derechos Humanos (Viena, 1993), y la Conferencia Internacional sobre Población y Desarrollo (Cairo, 1994). Están destinados igualmente a hacerse presentes en las otras tres grandes Conferencias del género programadas para el futuro próximo, a saber, la Cumbre Mundial para el Desarrollo Social (Copenhague, marzo de 1995), la IV Conferencia Mundial sobre la Mujer (Beijing, septiembre de 1995), y la II Conferencia de las Naciones Unidas sobre Asentamientos Humanos (Habitat-II, Estambul, 1996).

En su ámbito regional de actuación, el Instituto Interamericano de Derechos Humanos (IIDH) se anticipó a esos esfuerzos de reflexión universal al promover, con el copatrocinio del Banco Interamericano de Desarrollo (BID), en Brasília, en marzo de 1992, tres meses antes de la realización de la Conferencia de las Naciones Unidas sobre Medio Ambiente y Desarrollo, un Seminario pionero y de altísimo nivel académico, del cual resultó el libro *Derechos Humanos, Desarrollo Sustentable y Medio Ambiente* . Al terminar la Conferencia de Río de Janeiro, el libro ya se encontraba en circulación. Su primera edición se agotó rápidamente, y desde entonces algunos de los estudios en él contenidos han sido reproducidos, con la debida autorización del IIDH, en prestigiosos periódicos de distintos países. Más aún, el libro ha servido como fuente de consulta para diversas instituciones, y ha sido citado en varios trabajos científicos, inclusive en documentos oficiales de las Naciones Unidas.

En atención a numerosos pedidos recibidos por el IIDH desde que se agotó su primera edición, tenemos la grata satisfacción de lanzar ahora la segunda edición, actualizada y ampliada, del libro *Derechos Humanos, Desarrollo Sustentable y Medio Ambiente.* La nueva edición reproduce fielmente todo el contenido de la primera edición, que se coronó de éxito al profundizar el examen de las interrelaciones entre tales temas - y de modo especial entre la protección de los derechos humanos y la protección ambiental - y establecer posibles bases para un programa de educación en derechos humanos y medio ambiente, atento al necesario equilibrio entre los ámbitos conceptual y operativo. Transcurridos tres años, la publicación

original continúa vigente; la nueva edición, sin embargo, acrecienta los nuevos Anexos XIII a XIX, reveladores de la extraordinaria dimensión que adquirieron los temas de los derechos humanos, desarrollo sustentable y medio ambiente en la agenda internacional contemporánea.

En lo tocante al nivel global, nuestro estudio reproducido en el Anexo XIII evalúa, comparativamente, los resultados pertinentes obtenidos en las dos primeras Conferencias Mundiales del actual ciclo, la Conferencia de las Naciones Unidas sobre Medio Ambiente y Desarrollo (1992) y la II Conferencia Mundial de Derechos Humanos (1993), con atención especial a pasajes significativos de la Agenda 21 y de la Declaración de Río, adoptadas por la primera, y de la Declaración y Programa de Acción de Viena, adoptada por la segunda. El Anexo XIV reproduce el Proyecto de Declaración de Principios sobre Derechos Humanos y Medio Ambiente, preparado, en mayo de 1994, en la sede de las Naciones Unidas en Ginebra, por un Grupo de Expertos que tuvimos el honor de integrar.

En lo tocante al nivel regional (continente americano), los pronunciamientos y compromisos más recientes de los países latinoamericanos son inequívocos al establecer como prioritarios los temas componentes de la trilogía derechos humanos/desarrollo sustentable/medio ambiente, acrecentados a los objetivos del fortalecimiento de la democracia y de la erradicación de la pobreza extrema. Indicaciones en este sentido pueden ser encontradas, por ejemplo, en la última Declaración del Grupo de Río, de 1994 (Anexo XV), y en la actual plataforma conjunta de los países centroamericanos, compuesta por la Declaración de Guácimo, de agosto de 1994 (Anexo XVI), por la Alianza para el Desarrollo Sostenible, adoptada en Managua en octubre de 1994 (Anexo XVII), y por la Declaración de Tegucigalpa sobre la Paz y el Desarrollo en Centroamérica, de octubre de 1994 (Anexo XVIII). A estos documentos se suman algunos pasajes de la Declaración de Principios de la Cumbre de las Américas (Miami, diciembre de 1994 - Anexo XIX).

La temática en cuestión resalta la importancia del derecho de participación, así como el papel y el fortalecimiento de la sociedad civil y de las instituciones democráticas. De igual importancia resulta la capacitación para el pleno ejercicio de los derechos humanos, para que cada ser humano sea capaz de decidir sobre su propio destino. Los ilustres colaboradores en este libro efectivamente lograron producir una obra pionera que posibilitó al IIDH abrir camino, en su ámbito regional de actuación, en el cultivo de los grandes temas de nuestro tiempo. La propuesta del IIDH, en este contexto, no puede ser otra que la consideración de los temas globales de nuestra época, sobre todo los del desarrollo sustentable y del medio ambiente, a partir de la óptica de los derechos humanos. El objetivo último de este ejercicio no puede ser otro que el de la protección de la vida humana y del mejoramiento de las condiciones de vida de todos los seres humanos, sin discriminación de cualquier tipo, y en una perspectiva temporal, abarcando las generaciones presentes y futuras. Los derechos humanos se hacen presentes en todas las áreas de la actividad humana,

y el reconocimiento de esta realidad corresponde a un nuevo *ethos,* para cuya cristalización y difusión el IIDH no hesita en prestar su más decidida contribución.

San José de Costa Rica,
16 de enero de 1995.

Antônio Augusto CANÇADO TRINDADE
Director Ejecutivo del
Instituto Interamericano de Derechos Humanos

PREFACE TO THE SECOND EDITION

Human rights, sustainable development and the environment: few subjects have been occupying so much space in the contemporary international agenda like those that form this trilogy. Those themes are closely related among themselves, and have been forming, each one with greater or lesser emphasis, the common denominator of the great cycle of World Conferences of this end of century which began with the United Nations Conference on Environment and Development (Rio de Janeiro, 1992). They have occupied a central place in the three great Conferences of the kind held so far - the above-mentioned Rio Conference of 1992, the II World Conference on Human Rights (Vienna, 1993), and the International Conference on Population and Development (Cairo, 1994). They are bound likewise to mark their presence in the three other great Conferences of the kind scheduled for the near future, namely, the World Summit for Social Development (Copenhagen, March 1995), the IV World Conference on Women (Beijing, September 1995), and the II United Nations Conference on Human Settlements (Habitat-II, Istanbul, 1996).

In its regional scope of action, the Inter-American Institute of Human Rights (IIHR), anticipating itself to those endeavours of universal thinking, organized, with the cosponsorship of the Inter-American Development Bank (IDB), in Brasilia, in March 1992, three months before the taking place of the United Nations Conference on Environment and Development, a pioneering Seminar, of a very high academic level, from which the book *Human Rights, Sustainable Development and the Environment* resulted. By the time the Rio Conference closed, the book was already in circulation. Its first edition was quickly sold out, and ever since some of the studies contained therein have been republished, in the form of articles, with the due authorization of the IIHR, in leading periodicals of distinct countries. Moreover, the book has served as source of consultation to several institutions, and has been quoted in various scientific works, including in official documents of the United Nations.

In attention to the numerous requests received by the IIHR since its first edition was sold out, we are very pleased now to launch the second edition, updated and enlarged, of *Human Rights, Sustainable Development and the Environment.* The new edition faithfully reproduces the whole contents of the first edition, which was very successful in dwelling upon the examination of the interrelationships between those themes - and in special between the protection of human rights and environmental protection - and setting up possible grounds for a program of education in human rights and the environment, attentive to the necessary balance

between the conceptual and operational ambits. After three years, the original publication remains timely; the new edition, however, adds the new Annexes XIII to XIX, disclosing the extraordinary dimension which the themes of human rights, sustainable development and the environment have acquired in the contemporary international agenda.

As to the global level, our study reproduced in Annex XIII assesses, on a comparative basis, the pertinent results obtained in the first two World Conferences of the present cycle, the United Nations Conference on Environment and Development (1992) and the II World Conference on Human Rights (1993), with special attention to significant passages of Agenda 21 and the Rio Declaration, adopted by the former, and of the Vienna Declaration and Programme of Action, adopted by the latter. Annex XIV reproduces the Draft Declaration of Principles on Human Rights and the Environment, prepared, in May 1994, in the United Nations Office at Geneva, by a Group of Experts which we had the honour to integrate.

As to the regional level (American continent), the more recent pronouncements and commitments of Latin American countries are unequivocal in establishing as of priority the subjects forming the trilogy human rights / sustainable development / environment, besides the objectives of the strengthening of democracy and the erradication of extreme poverty. Indications to this effect are found, for example, in the last Declaration of the Group of Rio, of 1994 (Annex XV), and in the present joint platform of the Central American countries, encompassing the Declaration of Guácimo, of August 1994 (Annex XVI), the Alliance for Sustainable Development, adopted in Manágua in October 1994 (Annex XVII), and the Declaration of Tegucigalpa on Peace and Development in Central America, of October 1994 (Annex XVIII). To those documents some passages of the Declaration of Principles of the Summit of the Americas (Miami, December 1994 - Annex XIX) are added.

The matter at issue stresses the importance of the right of participation, as well as the role and strengthening of civil society and democratic institutions. Of equal importance results the empowerment for the full exercise of human rights, in order to enable every human being to decide about his own destiny. The distinguished collaborators in this book have indeed produced a pioneeering work which made it possible for the IIHR to pave the way, in its regional scope of action, for the study in depth of the great themes of our times. The proposal of the IIHR, in this context, cannot be other than the consideration of the global themes of our age, notably those of sustainable development and the environment, from the outlook of human rights. The ultimate objective of this exercise cannot be other than that of the protection of human life and the improvement of the conditions of living of all human beings, without discrimination of any kind, and in a temporal perspective, comprising present and future generations.

Human rights permeate all areas of human activity, and the recognition of this reality corresponds to a new *ethos*, for the crystallization and dissemination of which the IIHR does not hesitate to render its most determined contribution.

San José of Costa Rica,
16 January 1995.

Antônio Augusto CANÇADO TRINDADE
Executive Director of the
Inter-American Institute of Human Rights

PREFÁCIO À SEGUNDA EDIÇÃO

Direitos humanos, desenvolvimento sustentável e meio ambiente: poucos temas vêm ocupando tanto espaço na agenda internacional contemporânea como os que compõem esta trilogia. Estes temas encontram-se intimamente relacionados entre si, e vêm formando, cada um com maior ou menor ênfase, o denominador comum do grande ciclo de Conferências Mundiais deste fim de século desencadeado pela Conferência das Nações Unidas sobre Meio Ambiente e Desenvolvimento (Rio de Janeiro, 1992). Têm ocupado um lugar central nas três grandes Conferências do gênero realizadas até o presente - a referida Conferência do Rio de 1992, a II Conferência Mundial de Direitos Humanos (Viena, 1993), e a Conferência Internacional sobre População e Desenvolvimento (Cairo, 1994). Estão destinados a igualmente marcar presença nas outras três grandes Conferências do gênero programadas para o futuro próximo, a saber, a Cúpula Mundial para o Desenvolvimento Social (Copenhague, março de 1995), a IV Conferência Mundial sobre a Mulher (Beijing, setembro de 1995), e a II Conferência das Nações Unidas sobre Assentamentos Humanos (Habitat-II, Istambul, 1996).

Em seu âmbito regional de atuação, o Instituto Interamericano de Direitos Humanos (IIDH) antecipou-se a esses esforços de reflexão universal ao promover, com o copatrocínio do Banco Interamericano de Desenvolvimento (BID), em Brasília, em março de 1992, três meses antes da realização da Conferência das Nações Unidas sobre Meio Ambiente e Desenvolvimento, um Seminário pioneiro e de altíssimo nível acadêmico, do qual resultou o livro *Direitos Humanos, Desenvolvimento Sustentável e Meio Ambiente*. Ao encerrar-se a Conferência do Rio de Janeiro, já se encontrava o livro em circulação. Sua primeira edição esgotou-se rapidamente, e desde então alguns dos estudos nele contidos têm sido republicados, em forma de artigos, com a devida autorização do IIDH, em conceituados periódicos de distintos países. Além disso, tem o livro servido de fonte de consulta a diversas instituições, e recebido citações em vários trabalhos científicos, inclusive em documentos oficiais das Nações Unidas.

Em atenção a numerosos pedidos recebidos pelo IIDH desde que se esgotou sua primeira edição, temos a grata satisfação de agora dar a público a segunda edição, atualizada e ampliada, de *Direitos Humanos, Desenvolvimento Sustentável e Meio Ambiente*. A nova edição reproduz fielmente todo o conteúdo da primeira edição, que se coroou de êxito ao aprofundar o exame das interrelações entre aqueles temas - e de modo especial entre a proteção dos direitos humanos e a proteção ambiental - e estabelecer possíveis bases para um programa de educação em direitos humanos e meio ambiente, atento

ao necessário equilíbrio entre os âmbitos conceitual e operacional. Decorridos três anos, a publicação original continua a revestir-se de atualidade; a nova edição, no entanto, acrescenta os novos Anexos XIII a XIX, reveladores da extraordinária dimensão que adquiriram os temas dos direitos humanos,desenvolvimento sustentável e meio ambiente na agenda internacional contemporânea.

No tocante ao plano global, nosso estudo reproduzido no Anexo XIII avalia, em base comparativa, os resultados pertinentes obtidos nas duas primeiras Conferências Mundiais do atual ciclo, a Conferência das Nações Unidas sobre Meio Ambiente e Desenvolvimento (1992) e a II Conferência Mundial de Direitos Humanos (1993), com atenção especial a trechos significativos da Agenda 21 e da Declaração do Rio, adotadas pela primeira, e da Declaração e Programa de Ação de Viena, adotada pela segunda. O Anexo XIV reproduz o Projeto de Declaração de Princípios sobre Direitos Humanos e Meio Ambiente, preparado, em maio de 1994, na sede das Nações Unidas em Genebra, por um Grupo de Peritos que tivemos a honra de integrar.

No tocante ao plano regional (continente americano), os pronunciamentos e compromissos mais recentes dos países latinoamericanos são inequívocos em estabelecer como prioritários os temas componentes da trilogia direitos humanos/desenvolvimento sustentável/meio ambiente, acrescidos dos objetivos do fortalecimento da democracia e da erradicação da pobreza extrema. Indicações nesse sentido são encontradas, por exemplo, na última Declaração do Grupo do Rio, de 1994 (Anexo XV), e na atual plataforma conjunta dos países centroamericanos, composta pela Declaração de Guácimo, de agosto de 1994 (Anexo XVI), pela Aliança para o Desenvolvimento Sustentável, adotada em Manágua em outubro de 1994 (Anexo XVII), e pela Declaração de Tegucigalpa sobre a Paz e o Desenvolvimento na América Central, de outubro de 1994 (Anexo XVIII). A estes documentos somam-se alguns trechos da Declaração de Princípios da Cúpula das Américas (Miami, dezembro de 1994 - Anexo XIX).

A temática em apreço ressalta a importância do direito de participação, assim como o papel e o fortalecimento da sociedade civil e das instituições democráticas. De igual importância resulta a capacitação para o pleno exercício dos direitos humanos, para que cada ser humano seja capaz de decidir sobre seu próprio destino. Os ilustres colaboradores neste livro efetivamente lograram produzir uma obra pioneira que possibilitou ao IIDH abrir caminho, em seu âmbito regional de atuação, no cultivo dos grandes temas de nossos tempos. A proposta do IIDH, neste contexto, não pode ser outra que a consideração dos temas globais de nossa época, notadamente os do desenvolvimento sustentável e do meio ambiente, a partir da ótica dos direitos humanos. O objetivo último deste exercício não pode ser outro que o da proteção da vida humana e da melhoria das condições de vida de todos os seres humanos, sem discriminação de qualquer tipo, e em uma perspectiva temporal, abarcando as gerações presen-

tes e futuras. Os direitos humanos permeiam todas as áreas da atividade humana, e o reconhecimento desta realidade corresponde a um novo *ethos*, para cuja cristalização e difusão o IIDH não hesita em prestar sua mais decidida contribuição.

San José de Costa Rica,
16 de janeiro de 1995.

Antônio Augusto CANÇADO TRINDADE
Diretor Executivo do
Instituto Interamericano de Direitos Humanos

PREFACE A LA DEUXIEME EDITION

Droits de l'homme, développement durable et environnement: rares sont les thèmes qui revêtent aujourd'hui autant d'importance dans l'ordre du jour international comme ceux qui composent cette trilogie. Ces thèmes se trouvent étroitement imbriqués les uns aux autres et forment, chacun selon sa portée, le dénominateur commun du grand cycle de conférences mondiales en cette fin de siècle déclanchée par la Conférence des Nations Unies sur l'environnement et le développement (Rio de Janeiro, 1992). Ils ont également occupé une place centrale durant les trois conférences du même type realisées jusqu'à présent -la Conférence de Rio de 1992 susmentionnée, la IIème Conférence mondiale sur les droits de l'homme (Vienne, 1993) et la Conférence internationale sur la population et le développement (Le Caire, 1994). Ils seront également inscrits à l'ordre du jour des trois prochaines conférences du même genre, à savoir le Sommet mondial pour le développement social (Copenhague, mars 1995), la IVème Conférence mondiale sur la femme (Beijing, septembre 1995) et la IIème Conférence des Nations Unies sur les établissements humains (Habitat-II, Istamboul, 1996).

Dans sa sphère régionale d'activités, l'Institut Interaméricain des Droits de l'Homme (IIDH) a pris les devants sur ces efforts de réflexion universelle en promouvant, avec l'appui de la Banque Interaméricaine de Développement (BID), à Brasilia, en mars 1992, trois mois avant la réalisation de la Conférence des Nations Unies sur l'environnement et le développement, un séminaire pionnier d'un niveau académique particulièrement élevé, dont résulta le livre *Droits de l'homme, développement durable et environnement.* Alors que concluait la Conférence de Rio, le livre se trouvait déjà en circulation. Sa première édition fut rapidement épuisée et, depuis, certaines des études qu'il inclut furent publiées, sous forme d'articles, avec l'autorisation de l'IIDH, dans de prestigieux périodiques de divers pays. Plus encore, le livre a servi de source de consultation à diverses institutions et a été cité comme référence dans plusieurs travaux scientifiques, y compris dans des documents officiels des Nations Unies.

En réponse aux nombreuses demandes reçues par l'IIDH depuis l'épuisement de sa première édition, nous avons la grande satisfaction de lancer la deuxième édition, actualisée et élargie, du livre *Droits de l'homme, développement durable et environnement.* Cette réédition reproduit fidèlement l'ensemble du contenu de la première édition, dont le vif succès qui l'a couronnée s'explique par l'examen approfondi qui y est fait des imbrications entre ces thèmes - et de façon particulière celles entre la protection des droits de l'homme et la protection de l'environnement - ainsi que par l'établissement de possibles bases en vue de créer un programme d'éducation en matière de droits de l'homme et environnement, attentif au nécés-

saire équilibre entre les cadres conceptuels et opérationnels. Trois ans se sont écoulés depuis, mais la publication originale reste toujours d'actualité. La nouvelle édition, pourtant, ajoute les annexes XIII à XIX, révélatrices de l'extraordinaire dimension qu'ont acquis les thèmes des droits de l'homme, développement durable et environnement dans l'ordre du jour international contemporain.

Au plan global, notre étude reproduite en Annexe XIII évalue, de façon comparative, les résultats pertinents obtenus pendant les deux premières Conférences mondiales du cycle actuel, à savoir la Conférence des Nations Unies sur l'environnement et le développement (1992) et la IIème Conférence mondiale sur les droits de l'homme (1993), avec un intérêt tout particulier pour les passages significatifs de l'Agenda 21 et de la Déclaration de Rio, adoptés par la première, de la Déclaration et Programme d'Action de Vienne, adoptée lors de la seconde. L'annexe XIV reproduit le projet de Déclaration des principes sur les droits de l'homme et l'environnement, préparé au mois de mai 1994, à l'Office des Nations Unies à Genève, par un groupe d'experts que nous avons eu l'honneur d'intégrer.

Au plan régional (continent américain), les déclarations et compromis plus récents des pays latinoaméricains sont univoques en établissant comme priorités les thèmes composant la trilogie droits de l'homme / développement durable / environnement, ajoutés aux objectifs de l'affermissement de la démocratie et de l'élimination de la pauvreté extrême. Des indications en ce sens figurent par exemple dans la dernière déclaration du Groupe de Rio, de 1994 (Annexe XV), et dans l'actuelle plateforme revendicative des pays centraméricains, composée par la Déclaration de Guácimo, d'août 1994 (Annexe XVI), de l'Alliance pour le développement durable, adoptée à Managua en octobre 1994 (Annexe XVII) et de la Déclaration de Tegucigalpa sur la paix et le développement en Amérique Centrale (Annexe XVIII). A ces documents on peut ajouter certains passages de la Déclaration de principes du Sommet des Amériques (Miami, décembre 1994, Annexe XIX).

La thématique en question met en relief l'importance du droit de participation, tout comme le rôle et l'affermissement de la société civile et des institutions démocratiques. La formation pour le plein exercice des droits de l'homme, de façon à ce que chaque être humain soit capable de décider de sa propre destinée, est également importante. Les illustres collaborateurs dans ce livre ont effectivement réussis à produire une oeuvre pionnière qui a permis à l'IIDH d'ouvrir la voie, dans son champ régional d'activités, à la prise en considération des grands thèmes de notre temps. La proposition de l 'IIDH, dans ce contexte, ne peut être que celle de contribuer à la réflexion sur les thèmes globaux de notre époque, en particulier ceux du développement durable et de l'environnement, et ce, depuis la perspective des droits de l'homme. L'objectif primordial de cet exercice ne peut être que celui de la protection de la vie humaine et de l'amélioration des conditions de vie de tous les êtres humains, sans aucune distinction, et ce, dans une perspective temporelle, englobant les générations présentes et futures. Les droits de l'homme se font

présents dans toutes les sphères de l'activité humaine, et la reconnaissance de cette réalité correspond à un nouvel *ethos,* pour la cristallisation et la diffusion duquel, l'IIDH n'hésite pas à prêter sa plus déterminée contribution.

San José du Costa Rica,
le 16 janvier 1995.

Antônio Augusto CANÇADO TRINDADE
Directeur Exécutif de
l'Institut Interaméricain des Droits de l'Homme

Nota de Presentación

Actualmente se está formando la conciencia de que la protección de los derechos humanos y la protección del medio ambiente presentan puntos de contacto, afinidades y un cierto grado de interrelación en sus líneas de evolución en las últimas décadas. Con el propósito básico de profundizar en el examen independiente de esta nueva temática, nos reunimos, en el Hotel Carlton en Brasília, del 04 al 07 de marzo de 1992, un grupo de especialistas, provenientes de diversos países, comprometidos o identificados con la causa de la protección de los derechos humanos, o de la protección ambiental, o de ambas. Todos los que participamos en el evento, copatrocinado por el Instituto Interamericano de Derechos Humanos, el Banco Interamericano de Desarrollo, la Fundación Friedrich Naumann y la Agencia Internacional para el Desarrollo, guardaremos el grato recuerdo de cuatro días memorables de riquísimo intercambio de ideas y experiencias, y de los esfuerzos conjuntos en adentrarnos en esta nueva área del derecho internacional contemporáneo, para hacer frente a los dos grandes desafíos de nuestro tiempo: la protección del ser humano y la protección del medio ambiente.

El Seminario de Brasilia de marzo de 1992 se destaca no solamente por la alta calidad de los participantes invitados, sino también por su pionerismo, al buscar abrir camino en una temática virtualmente inexplorada hasta el presente. Habrá, así, ciertamente de servir de inspiración a esfuerzos congéneres a ser emprendidos en el futuro por otras entidades con el mismo propósito, en los planos global y regional. Deseamos, pues, dejar consignados nuestros más sinceros agradecimientos a cada uno de los conferencistas y relatores del Seminario de Brasilia, que atendieron a nuestra invitación y no hesitaron en abandonar por algunos días sus compromisos y numerosos quehaceres en los países de origen y en distintos centros brasileños y en desplazarse hasta Brasilia para prestar su contribución y tornar posible la realización de esta obra conjunta de carácter pionero.

Muchos de los participantes, internacionalmente consagrados, cuentan con una amplia y reconocida trayectoria, sea en la protección de los derechos humanos, sea en la protección ambiental, o en ambas, lo que imprimió al Seminario un altísimo nivel académico, como raramente se encuentra, según la evaluación unánime de todos cuantos estuvimos presentes en el evento. A sus contribuciones se suman las comunicaciones de otros expertos y de representantes de distintas entidades que, imposibilitados de venir a Brasilia en los dias del Seminario, sin embargo quisieron amablemente dejar registrados su apoyo y su mensaje al evento.

Las diversas reflexiones sobre el *Leitmovit* del Seminario, en forma de conferencias, informes temáticos, informes nacionales, recomendaciones de los grupos de trabajo, y comunicaciones, se encuentran reunidas en este libro, que refleja fielmente el desarrollo del evento. El presente tomo constituye así la memoria del Seminario y divulga sus resultados a un público más amplio, que por

ventura pueda venir a interesarse por la nueva temática enfocada. Las contribuciones se encuentran publicadas en el idioma en el cual fueron presentadas al Seminario (castellano, inglés o portugués). La propia distribución de la materia retrata el cuidado que tuvimos de buscar un equilibrio entre las contribuciones de cuño académico, de pensamiento sistematizado, contenidas en las conferencias y en algunos de los informes temáticos, y las contribuciones de levantamiento y evaluación de la experiencia acumulada hasta el presente en el area en cuestión en los seis países-pilotos (Brasil, Chile, Colombia, Costa Rica, México, Venezuela) y por diversos organismos (intergubernamentales y no-gubernamentales), figurando en los informes nacionales y en algunos de los informes temáticos. Las atenciones se fijaron, de este modo, igualmente en la reflexión y en la *praxis*, en el pensamiento y en la acción.

El Seminario tuvo aún un segundo objetivo, a saber, el establecimiento de bases para un programa de educación en derechos humanos y medio ambiente, a ser desarrollado, en el futuro próximo, por el Instituto Intermericano de Derechos Humanos, con el valioso apoyo del Banco Interamericano de Desarrollo, inicialmente en los seis países-pilotos (*supra*). Las recomendaciones con este propósito, preparadas por cinco grupos de trabajo del Seminario, se encuentran también reproducidas en este tomo, así como las Conclusiones del Seminario, elaboradas por el Comité de Redacción y aprobadas en plenario. Están así lanzadas las bases de un programa pionero del Instituto Interamericano de Derechos Humanos, bajo las Presidencias sucesivas del Dr. Thomas Buergenthal y del Dr. Pedro Nikken y la Dirección de la Dra. Sonia Picado, quienes no escatimaron esfuerzos en respaldar la inclusión del tema de los Derechos Humanos y el Medio Ambiente en el ámbito ampliado de actuación del Instituto.

Los puntos de vista expuestos en el Seminario de Brasília de 1992, en las conferencias, en los informes temáticos y nacionales, en los grupos de trabajo y en las comunicaciones, aqui reproducidos, son naturalmente de responsabilidad exclusiva de los respectivos autores, y no representan necesariamente las opiniones o posiciones de las entidades copatrocinadoras, ni tampoco las vinculan. Sin embargo, serán ciertamente tenidos en cuenta no sólo por aquellas entidades, sino también por todos los estudiosos y organismos actuantes en la defensa de los derechos humanos y del medio ambiente, por la contribución valiosa y pionera, y de pensamiento independiente, que representan para el avance, la expansión y el perfeccionamiento de este *derecho de protección*, del ser humano así como del medio ambiente, tan fundamentalmente importante y necesario en nuestros días.

Brasília, 23 de marzo de 1992.

A. A. CANÇADO TRINDADE
Editor, y Director Académico
del Seminario de Brasília.

PARTE / PART I

INTRODUCCIÓN / INTRODUCTION

(Sesión Inaugural del Seminario / Opening Session of the Seminar)

El Medio Ambiente en el Marco de los Derechos Humanos:

PALABRAS DE INAUGURACIÓN DEL SEMINARIO INTERAMERICANO SOBRE DERECHOS HUMANOS Y MEDIO AMBIENTE (Brasília, 1982)

ANTÔNIO AUGUSTO CANÇADO TRINDADE

Al inaugurar el Seminario Interamericano de Brasilia de 1992 sobre Derechos Humanos y Medio Ambiente, deseamos, en nombre del Consejo Directivo del Instituto Interamericano de Derechos Humanos, estender la más cordial bienvenida a todos, y a cada uno, de los participantes. Durante los cuatro dias de este Seminario (04 a 07 de marzo de 1992) procederemos a una reflexión y a un diálogo sobre las relaciones entre la protección de los derechos humanos y la protección ambiental. Para esto, la forma de este evento no podría ser otra que la de una Reunión de Expertos, de composición necesariamente limitada em número y altamente selectiva. Al dar inicio a los trabajos de este Seminario internacional, nos permitiríamos detenernos por algún tiempo en esta temática básica y central.

En el seno del Grupo de Consultores Jurídicos del Programa de Naciones Unidas para el Medio Ambiente (PNUMA) hemos insistido en la necesidad e importancia de establecer la relación supracitada. Así, en la I Reunión del Grupo de Consultores Jurídicos del PNUMA sobre el Concepto de 'Interés Común de la Humanidad' en relación con cuestiones ambientales globales, procedimos, como co-*rapporteur* de la Reunión (Malta, diciembre de 1990), a la inclusión de dos párrafos sobre aquella relación (§§ 11-12) en el Informe final. Los dos párrafos referidos del Informe de la Reunión de Malta tuvieron la siguiente redacción:

- "11. The third round of discussions centred on the relationships between environmental protection and human rights protection. It was initially pointed out that resort to the concept of common concern of mankind, besides disclosing the link with the human rights framework,

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warned that one was here before a crucial question of *survival*, which brought to the fore the fundamental right of all to live in a clean, safe and healthy environment. Hence the fundamental importance of the human rights framework also for environmental protection. Some participants recommended that the theory of "generations of human rights", in particular, was preferably to be avoided in view of its inadequacies. There was on the main issue general agreement that environmental protection and human rights protection were in fact linked and could not be divorced from each other, and that emphasis should here be laid on fundamental rights.

12. The framework of human rights, with emphasis on social dimension and participation, was regarded as more appropriate than the framework of international ecological security, with emphasis on the State system, for approaching global environmental issues. It was pointed out that the preventive dimension was present in both environmental protection and human rights protection (in the instruments of protection themselves, in their evolutionary interpretation, in the evolving notion of *potential* victims). It was considered important to bring together the evolutions of environmental protection and human rights protection; they disclosed many affinities and both underwent a process of globalization. It was argued that a bridge between the two lay in the fundamental rights to life and to health in their wide dimension, comprising negative as well as positive measures, resting at the basis of the *ratio legis* of the two regimes of protection and paving the way for the recognition and crystallization of the right to a healthy environment. It was further argued that the protection of vulnerable groups (e.g., indigenous populations) lay at the basis of environmental protection and human rights protection, thus disclosing the need to bring together human and environmental considerations. The need was pointed out to develop further attention and research on the question of the implementation of the right to a healthy environment, in its individual and collective dimensions"(1).

En la misma línea de pensamiento, se señaló, en la II Reunión del referido Grupo de Consultores Jurídicos del PNUMA (Ginebra, marzo de 1991), la importancia del reconocimiento del derecho a un medio ambiente sano y del derecho al desarrollo como un derecho humano para la consideración de problemas de condiciones de vida como la erradicación de la pobreza, las presiones demográficas, la salud, la educación, la nutrición, la habitación y la urbanización. La Reunión también consideró - en relación con las consecuencias ambientales de

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(1) UNEP, *The Meeting of the Group of Legal Experts to Examine the Concept of the Common Concern of Mankind in Relation to Global Environmental Issues* (Malta, 1990; ed. D. J. Attard). *Report on the Proceedings of the Meeting* (co-*rapporteurs*, A.A. Cançado Trindade and D.J Attard), Malta/Nairobi, UNEP, 1991, pp. 24-25.

la reciente Guerra del Golfo - el impacto y el daño ambientales causados por determinados medios y métodos de actividades hostiles a la luz de los preceptos del derecho de los conflictos armados y del derecho internacional humanitario en general(2). Posteriormente, en el Seminario Internacional, co-auspiciado por el PNUMA, sobre "Los Países en Desarrollo y el Derecho Ambiental Internacional", y realizado en Beijing, China, em agosto de 1991, otra vez insistimos, nuevamente como co-*rapporteur* del Seminario, en la inclusión - que se efectuó - del párrafo siguiente en el Informe final del Seminario.

- "*Environmental Protection and Human Rights* -

> There was general consensus that there were linkages between the domain of environmental protection and that of human rights, provided mainly by the focus on certain fundamental rights (*inter alia*, the right to life and the right to health). It was further indicated that the emergence of the right to a healthy environment and the right to development was meant to enhance rather than to restrict, other rights, given their indivisibility and interrelatedness. It was generally felt that environmental protection also amounted ultimately to a quest for survival and the protection of human health"(3).

Hace una década, el Programa de Montevideo de Desarrollo y Examen Periódico del Derecho Ambiental, que, a partir de su adopción en 1981 ha constituído la base de las actividades del PNUMA en la esfera del derecho ambiental, no hizo ninguna referencia expresa a la protección de los derechos humanos o a la relación de esta con la protección ambiental(4). Sin embargo, algunos de los temas o sectores incluídos en el Programa de Montevideo de 1981 tienen relación con aspectos de la vigencia de algunos derechos humanos (v.g., derecho a la salud). Como parte de los *travaux préparatoires* de la Reunión de Expertos Gubernamentales en Derecho Ambiental para el Examen (revisión y actualización) del Programa de Montevideo (Rio de Janeiro, 30/10 a 02/11/1991), el Grupo de Consultores Jurídicos del PNUMA volvió a reunirse, en Ginebra y en Nairobi, en julio y septiembre de 1991, respectivamente, para evaluar los resultados de la primera década del Programa de Montevideo (1981-1991) y considerar nuevas

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(2) Informe de la Reunión de Ginebra reproducido *in 13 Revista del Instituto Interamericano de Derechos Humanos* (1991) pp. 253-258, §§ 8 y 11-13, respectivamente; la Reunión se refirió, además, al problema de los "refugiados ecológicos", a la luz del derecho internacional de los refugiados (§ 12).

(3) UNEP, *Beijing Symposium on Developing Countries and International Environmenal Law* (Beijing, China, 1991), *Final Report* (co-*rapporteurs*, A.A. Cançado Trindade and A. Malhotra), Beijing/Nairobi, UNEP, 1991, p. 7.

(4) Cf. UNEP, *Review of the Montevideo Programme for the Development and Periodic Review of Environmental Law 1981-1991*, Nairobi, UNEP, August 1991, pp. 1-47.

esferas de acción resultantes de la evolución de los problemas ambientales. Las sugerencias y recomendaciones del Grupo de Consultores del PNUMA fueron recogidas y incorporadas en la *Nota del Director Ejecutivo* del PNUMA (documento UNEP/ENV.LAW/2/2, de 10/09/1991) a la referida Reunión de Expertos Gubernamentales, en la cual ella sirvió de documento de base y fue ampliamente debatida.

En el seno del Grupo de Consultores Jurídicos del PNUMA (reuniones preparatorias de Ginebra y de Nairobi, *supra*), sostuvimos la necesidad de que la revisión y actualización del Programa de Montevideo incluyeran un reconocimiento expreso de la relación entre la protección ambiental y la protección de los derechos humanos y contemplaran nuevas areas o temas que reflejasen la realidad de esta relación. Como resultado del consenso que se logró formar en el seno del Grupo de Consultores Jurídicos del PNUMA sobre este punto, el documento supracitado contiene algunos pasajes significativos en este sentido, que merecen mención y destaque. Así, la referida *Nota del Director Ejecutivo* del PNUMA empieza *inter alia* por considerar como uno de los nuevos temas a abordarse en el curso del próximo decenio "la relevancia y la contribución de la protección de los derechos humanos para la protección del medio ambiente, con atención especial a la formulación e implementación del derecho a un medio ambiente sano"(5) ; incluye, además, el nuevo tema de los "problemas ambientales de la urbanización, incluido el crecimiento demográfico"(6).

En relación con este último tema, el documento del PNUMA se refiere a los problemas de urbanización incontrolada con la situación o condición prevaleciente de pobreza generalizada alrededor de las ciudades grandes de los países en desarrollo: "esto no sólo produce efectos nocivos en la salud humana, sino también problemas ambientales", tornándose un tema prioritario para numerosos paises. Tales problemas ambientales de los paises en desarrollo derivan de las "condiciones de pobreza", y requieren así la mejora de las "condiciones socioeconómicas de vida", la búsqueda de "sociedades más igualitarias"(7). Aqui, pues, se sostiene el derecho a la vida en su amplia dimensión, abarcando las condiciones dignas y adecuadas de vida, y se toman en consideración los efectos de dichos problemas sobre el medio ambiente y sobre la salud humana al mismo tiempo, conjuntamente.

La *Nota del Director Ejecutivo* del PNUMA dedica asimismo atención a la "conciencia y educación ambiental": "es necesario educar al público sobre cuestiones ambientales para que sea conciente de la gravedad de los problemas ambientales, con miras a lograr su participación efectiva y la aceptación de responsabilidad individual relativa al medio ambiente"; además, "también es necesario facilitar la participación del público en las etapas apropiadas del proceso

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(5) PNUMA, doc. UNEP/ENV.LAW/2/2, de 10/09/91, pp. 4, y 16 item 9.

(6) *Ibid.*, p. 4.

(7) *Ibid.*, p. 15 item 6, § 71.

decisorio, tanto en lo tocante al proceso legislativo y administrativo como en lo que respecta a la implementación"; y, más adelante, agrega la *Nota* que en el proceso de creación de una conciencia pública sobre cuestiones ambientales debe estudiarse asimismo la posibilidad de reconocer a las organizaciones no-gubernamentales y a los particulares "capacidad para impetrar causas y acciones ambientales ante los tribunales nacionales"(8). En otros términos, se reconocen el derecho a la información (ambiental), el derecho de participación (incluso en el proceso decisorio), y el derecho a recursos legales disponibles y eficaces, - corolarios del derecho a un medio ambiente sano (derecho a la conservación del medio ambiente).

Al examinar el item de la implementación de los instrumentos internacionales, el documento del PNUMA significativamente reconoce la contribución que puede aportar en esta area la experiencia acumulada en el campo de la implementación internacional de los derechos humanos:

> - "La experiencia de los procedimientos voluntarios de informes en el campo de los derechos humanos en el ámbito de las Naciones Unidas, por medio del cual no-Partes en tratados de derechos humanos envían informes sobre sus situaciones de derechos humanos, debía examinarse de cerca con miras a la posible adopción de un esquema similar para los acuerdos sobre el medio ambiente. En este contexto, el paralelo entre el creciente número de tratados e instrumentos de derechos humanos firmados a partir de la adopción de la Declaración Universal de Derechos Humanos de 1948 y el creciente número de acuerdos de derecho ambiental concluídos después de la Conferencia de Estocolmo de 1972 pone de manifiesto la necesidad de considerar la relevancia de los procedimientos de determinación de los hechos (*fact-finding*), de los procedimientos de informes, la necesidad de uniformización de los informes y su periodicidad, y la necesidad de establecer sistemas de verificación en el caso de los tratados ambientales. Figura anexo al presente informe un extracto del estudio sobre los enfoques paralelos y las afinidades en la evolución de los tratados e instrumentos de derecho ambiental y de protección de los derechos humanos"(9). (...)

El documento del PNUMA también se refirió a la necesidad de tomar medidas para mayor desarrollo de conceptos y principios emergentes del derecho ambiental, como, *inter alia*, los de interés común de la humanidad, equidad intergeneracional, derecho al desarrollo sustentable(10). En fin, el referido documento volvió su atención al derecho internacional humanitario, al señalar que

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(8) *Ibid.*, pp. 9-10 item L, §§ 44 y 46, respectivamente; cf. también p. 13, § 66.

(9) *Ibid.*, pp. 10-11, § 53. Se trata del estudio que realizamos para el PNUMA, A.A. Cançado Trindade, *Human Rights and the Environment*, y que entregamos al PNUMA en 04 de septiembre de 1991, pp. 1-22 (mecanografiado, circulación limitada; estudio enviado por el PNUMA al Centro de Derechos Humanos de Naciones Unidas, el 20 de febrero de 1992).

(10) *Ibid.*, p. 8, § 38.

"habría que estudiar si es necesario examinar las normas internacionales existentes que regulan la protección del medio ambiente en tiempo de conflicto armado", particularmente a la luz de los desastres ambientales resultantes de la reciente guerra del Golfo[11]. Advirtió, además, el documento del PNUMA que debía "prestarse particular atención a la cuestión del desmantelamiento y destrucción de armas y dispositivos nucleares de manera segura, para que los residuos no representen peligro para las generaciones presentes o futuras"[12]. Subyacente a estas últimas advertencias encuéntrase la preocupación con la salvaguardia del derecho a la vida y a la salud en su amplia dimensión, y en último análisis con la propia sobrevivencia de la humanidad.

Todos los puntos arriba fueron debidamente considerados y ampliamente debatidos en la referida Reunión de Expertos Gubernamentales en Derecho Ambiental para el Examen del Programa de Montevideo (Rio de Janeiro, 30/10 a 02/11/1991), como lo relata el *Informe de la Reunión*, preparado por el PNUMA (documento UNEP/ENV. LAW/2/3, de 22/11/1991). Desde el inicio, las primeras intervenciones en la Reunión dejaron claro que había que "llevar plenamente en consideración" las dos principales cuestiones planteadas: "la pobreza y la injusticia social"[13]. Algunas Delegaciones, reconociendo el rol de los ciudadanos y las ONGs, sugerieron que se debería conceder *jus standi* apropiado a los ciudadanos y a las ONGs en mecanismos judiciales y administrativos, particularmente en los relativos a la implementación de la legislación ambiental[14]. Los documentos adoptados por la Reunión se refieren a la protección de la salud humana y del medio ambiente[15]. Las "Conclusiones y Recomendaciones de Rio de Janeiro", adoptadas por el plenario el 02 de noviembre de 1991, insisten en que el derecho ambiental es un instrumento esencial para la mejora de la calidad de vida[16].

Además, un proyecto de resolución sobre conclusiones de la Reunión de Rio de Janeiro parcialmente discutidas pero no adoptadas por falta de tiempo contiene algunos puntos dignos de registro. El referido proyecto de resolución advierte, por ejemplo, que el Programa de Montevideo (revisado) para la próxima década debe tener en cuenta las condiciones sociales, económicas y políticas, y las necesidades de los países en desarrollo[17]; debe, además, estar dirigido a armonizar las preocupaciones con el desarrollo y el medio ambiente mediante la adopción de "un enfoque integrado y coordinado de todos los aspectos de la legislación ambiental y de la aplicación del Programa"[18]. En fin, los documentos parcialmente

(11) *Ibid.*, p. 6, § 16.
(12) *Ibid.*, p. 17, § 78.
(13) PNUMA, doc. UNEP/ENV.LAW/2/3, de 22/11/1991, p. 3, § 11.
(14) *Ibid.*, pp. 8-9, § 37.
(15) *Cf. ibid.*, Anexo II, p. 13, § 2.
(16) Cf. *ibid.*, Anexo I, p.11, § 1.
(17) *Ibid.*, Anexo III, p. 16, § 1(b).
(18) *Ibid.*, Anexo III, p. 16, § 3(b).

considerados pero no adoptados por la Reunión por falta de tiempo señalan significativamente la necesidad de

"(iii). Establish appropriate reporting systems on the implementation of international legal instruments, considering the reporting systems in other fields such as human rights and nuclear activities, providing, where appropriate, for public comments on such reports;

(iv). Examine the possibility of establishing verification systems for environmental treaties having regard to the experiences gained, especially in the human rights field (...)"[19].

Los referidos documentos también enfatizan la necesidad de promover la conscientización, educación e información públicas sobre los regímenes ambientales internacionales así como una mayor participación pública en la consideración e implementación de la normatividad ambiental internacional y nacional[20]. Agregan la necesidad de desarrollar recursos apropriados para las víctimas y víctimas potenciales de daño ambiental[21]. Y además se refieren a la necesidad de cooperación para la protección del medio ambiente durante los conflictos armados[22]. Los temas adicionales para posible consideración durante el próximo decenio incluyen los siguientes:

"(...) 3. Further development of emerging and evolving concepts of environmental law, such as the (...) common concern of mankind, inter-generational equity; (...)

8. Environmental problems of human settlements, including their growth; (...)

11. The relevance and contribution of the international law of human rights to environmental protection mechanisms; (...)"[23].

También en el seno del Consejo Directivo del Instituto Interamericano de Derechos Humanos hemos defendido la necesidad de diversificación temática, con nuevas áreas de investigación incluyendo el tema del medio ambiente en el marco de los derechos humanos (reunión anual del Consejo de 1991)[24]. Asumimos la dirección académica de este nuevo programa del IIDH - en cuyo marco se realiza el presente Seminario, - que logró alcanzar consenso en el Consejo Directivo en cuanto a su importancia para el IIDH, como "una de las prioridades de la próxima década"[25]. Todavia en el ámbito del sistema interamericano, en un estudio preparado para el Comité Jurídico Interamericano de la OEA nos referimos a los

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(19) *Ibid.*, Anexo III, p. 24, § 11.

(20) Cf. *ibid.*, Anexo III, pp. 22-23, § 9.

(21) *Cf. ibid.*, Anexo III, p. 21, § 7 (i).

(22) Cf. *ibid.*, Anexo III, p. 17, § 1 (iv).

(23) *Ibid.*, Anexo III, p. 27, § 15.

(24) Cf. IIDH, *Informe al Consejo* (marzo 1990/marzo 1991), pp. 10-12, esp. p. 11.

(25) IIDH, *Informe al Consejo* (marzo 1991/marzo 1992), p. 9.

problemas prioritarios de los países de la región que conciernen tanto a la protección de los derechos humanos como a la protección ambiental (v.g., la pobreza urbana extrema y los asentamientos humanos, el mejoramiento de la calidad de vida de la población, el fortalecimiento del proceso y de las instituciones democráticas y el derecho de participación, la construcción de una sociedad más igualitaria, la realización de ciertos derechos básicos como los derechos a la alimentación, a la habitación, a la salud, a la educación)(26).

Además de estas iniciativas y esfuerzos pioneros, estamos convencidos de que el tema de las relaciones entre la protección de los derechos humanos y la protección ambiental merece ser más ampliamente difundido y profundizado(27). Para esto, para los propósitos básicos de este Seminario Interamericano sobre Derechos Humanos y Medio Ambiente, tenemos la gran satisfacción de recibir, en esta sala de reuniones del Hotel Carlton de Brasília, algunos de los más distinguidos expertos en la temática del Seminario, provenientes de diferentes continentes, países e instituciones, que hoy nos honran con su presencia. Algunos cuentan con una vasta trayectoria en el campo de la protección de los derechos humanos, otros con amplia experiencia en el campo de la protección ambiental, y otros en fin con la rara combinación de conocimiento teórico y práctico de ambas áreas. Somos, así, afortunados en poder contar con un Grupo de Expertos altamente calificado para la realización de los propósitos básicos del Seminario.

Anticipamos nuestros agradecimientos por su contribución, así como por la presencia de los observadores, dentre los cuales los Profesores del Departamento de Ciencia Política y Relaciones Internacionales de la Universidad de Brasília, y de otras Universidades brasileñas, que brindan su apoyo al Programa de Promoción de Instrumentos Internacionales de Derechos Humanos de la Universidad de Brasília, bajo nuestra coordinación, ahora en su segundo año de actividades académicas. Agradecemos, en particular, en nombre del Consejo Directivo del Instituto Interamericano de Derechos Humanos, a las entidades copatrocinadoras de este evento, - el Banco Interamericano de Desarrollo, la Agencia Internacional para el Desarrollo, y la Fundación Friedrich-Naumann, - que, por su valioso apoyo, han tornado posible la realización de este Seminario.

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(26) Se trata del estudio que realizamos para el Comité Jurídico Interamericano de la OEA (CJI/OEA), A.A. Cançado Trindade, *International Environmental Law: Principal Issues Concerning the American States*, y que entregamos al CJI/OEA el 06 de noviembre de 1991, pp. 1-22 (mecanografiado, circulación interna; el referido estudio tuvo por objetivo ayudar a la preparación del Informe del CJI/OEA sobre el tema "El Proceso Tendiente a un Derecho Ambiental de las Americas", relator Galo Leoro F., doc. OEA/Ser. Q/CJI/RES. I-13/92, de 13/03/1992, estudio *cit. in* pp. 18, 51 y Anexo).

(27) Para un estudio reciente sobre este tema en particular, cf. A.A. Cançado Trindade, "The Parallel Evolutions of International Human Rights Protection and of Environmental Protection and the Absence of Restrictions upon the Exercise of Recognized Human Rights", 13 *Revista del Instituto Interamericano de Derechos Humanos* (1991) pp. 35-76.

Como se puede constatar en el Programa, hemos intentado establecer un necesario equilibrio entre los temas atinentes al marco conceptual, concentrados en los dos primeros dias del Seminario, y los orientados hacia la operacionalidad, concentrados en el tercer dia del Seminario. Dedicaremos el cuarto y último dia del Seminario al establecimiento de bases y a la formulación de recomendaciones para la elaboración de un proyecto de programa de educación en derechos humanos y en derecho ambiental para el Instituto Interamericano de Derechos Humanos, a ser desarrollado de inicio y experimentalmente en seis paises pilotos latinoamericanos (Brasil, Chile, Colombia, Costa Rica, Mexico y Venezuela). En adición, estará a cargo de un Comité de Redacción designado por los participantes invitados la elaboración, al término de los trabajos, de las Conclusiones del Seminario. Los idiomas de trabajo serán el castellano, el inglés y el portugués.

Además del significativo apoyo de los expertos de varios paises aqui presentes y de los que, todavía en viaje hacia Brasil, se unirán a nosotros en el curso del Seminario, hemos recibido importantes adhesiones de otros expertos de diferentes regiones del mundo que, imposibilitados de venir a Brasilia en razón de otros compromisos, sin embargo nos han enviado en los últimos dias comunicaciones al Seminario (como, v.g., *inter alia*, las de la Directora Ejecutiva del Instituto Interamericano de Derechos Humanos, Dra. Sonia Picado, y del Director Ejecutivo del Programa de Naciones Unidas para el Medio Ambiente, Dr. Mostafa Tolba), que, junto con los textos de las ponencias, los informes e intervenciones y los documentos finales del evento, constarán también en las Actas del Seminario Interamericano sobre Derechos Humanos y Medio Ambiente, que esperamos tener publicadas en forma de libro y enviadas a todos los participantes al final del corriente año. Al concluir estas palabras inaugurales del Seminario de Brasília, deseamos a todos los presentes cuatro dias de agradable convivencia y fructuosa labor, reiterando, en nombre del Consejo Directivo del Instituto Interamericano de Derechos Humanos, nuestros más sinceros agradecimientos por su honrosa presencia y su valiosa participación y contribución.

El Banco Interamericano de Desarrollo, los Derechos Humanos y el Medio Ambiente

DAVID B. ATKINSON

En primer lugar, deseo agradecerles la oportunidad de dirigirles algunas palabras a este importante Seminario sobre los Derechos Humanos y el Medio Ambiente.

La experiencia que hemos tenido aquí en Brasil, nos ha indicado claramente que existe una relación directa entre la protección y recuperación del medio ambiente y la defensa de los derechos humanos. Es en parte por eso que yo quisiera compartir con Ustedes algunas de las experiencias que hemos tenido aquí en proyectos ambientales en Brasil.

El Banco Interamericano en este momento se encuentra en el proceso de compromiso de los recursos de la Séptima Reposición, la cual cubre el período 1990/1993 inclusive. El total de recursos a comprometerse en este período alcanzaría el equivalente de aproximadamente US$ 22,5 billones. Dentro de las prioridades asignadas por los Gobernadores del Banco al aprobar la Séptima Reposición fue la del medio ambiente. A raíz de esa asignación de prioridad, el Banco ha establecido una serie de políticas para asegurar de que todos los proyectos tomen en cuenta adecuadamente el factor del medio ambiente.

Se ha creado una División del Medio Ambiente en el Departamento de Análisis de Proyectos y desde hace unos años existía el Comité del Medio Ambiente presidido por el propio Presidente del Banco. Todo proyecto sometido al Banco Interamericano tiene que ser analizado desde el punto de vista de su potencial impacto sobre el medio ambiente, sea positivo o negativo. Para este propósito hemos creado cuatro clasificaciones para determinar la naturaleza y el grado de ese impacto. La clasificación número 1 se aplica a proyectos que claramente tienen un impacto positivo sobre el medio ambiente. La clasificación número 2 se refiere a aquellos que tienen un efecto neutral sobre el medio ambiente. Este sería el caso, por ejemplo, de estudios o ciertos programas de cooperación técnica. La clasificación número 3 se aplica a proyectos que tendrían algún impacto

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sobre el medio ambiente que puede ser controlado o eliminado con relativa facilidad. Finalmente, tenemos la clasificación número 4 que se aplica a proyectos que podrían tener un impacto significativo sobre el medio ambiente y que requieren un análisis muy especial para determinar las medidas necesarias para minimizar esos impactos.

El Banco ha publicado recientemente varios folletos, sobre los siguientes tres temas relacionados con el medio ambiente: la forma de clasificar los proyectos ambientales financiados por el Banco; la política relativa a cuestiones socio-culturales; y la política con respecto al nuestro relacionamiento con los organismos no-gubernamentales. No pretendo en este momento entrar en detalle sobre la materia tratada en estos folletos sino ofrecérselos al Director Académico de este Seminario, a fin de que pueda harceles llegar a los interesados copias de los mismos.

Con esta introducción, quisiera ahora referirme a algunas experiencias que estamos teniendo en este país con proyectos dirigidos principalmente al sector del medio ambiente. Creo que nuestra experiencia en este país es representativa de lo que está haciendo el Banco Interamericano en los otros países del continente en materia de medio ambiente.

En el caso de Brasil, por ejemplo, nuestro programa de préstamos refleja un elevado interés en dos aspectos principales. Uno es el saneamiento ambiental de los grandes centros urbanos del país y el otro es la recuperación y conservación de las selvas en el norte. El año pasado, por ejemplo, el Banco aprobó dos operaciones importantísimas por un total de aproximadamente US$ 500 millones para contribuir a mejorar las condiciones sanitarias y ambientales de áreas urbanas: uno de ámbito nacional en áreas de bajos ingresos y alto desempleo y el otro en la ciudad de Belém. Este año tenemos cuatro operaciones que del mismo modo tienen como objetivo principal mejorar el medio ambiente y condiciones sanitarias en áreas urbanas; una en la ciudad de Fortaleza, otra para empezar a limpiar la bahía de Guanabara en Rio de Janeiro, el tercero para comenzar a aliviar la situación desastrosa del Rio Tietê en São Paulo y la cuarta para comenzar a mejorar el medio ambiente urbano en la ciudad de Porto Alegre a través de la limpieza del Rio Guaíba. De menor monto, pero no de menor importancia, seria nuestro apoyo al Fundo Nacional del Medio Ambiente, con un préstamo de US$ 22 millones a fin de financiar proyectos modelo en todo el país, desarrollados principalmente por organismos no-gubernamentales y otras pequeñas entidades. Este fondo contribuirá a financiar proyectos relativamente pequeños con un impacto sustancial sobre el medio ambiente y la posibilidad se servir como modelo para multiplicarse en otras operaciones de mayor envergadura.

Quisiera terminar mis comentarios con una referencia a la experiencia del Banco Interamericano en el financiamiento de la ejecución del Programa de Protección del Medio Ambiente y Comunidades Indígenas - PMACI. Esta experiencia, creo que demuestra claramente la relación directa entre los derechos

humanos y el medio ambiente en el sentido de que, al darle poder de decisión y ejecución a aquellos más involucrados e interesados en la ejecución de los proyectos se asegura el éxito de los mismos.

El PMACI es un proyecto con un costo del equivalente del US$ 10 millones que comprende cinco actividades para la protección del medio ambiente y comunidades indígenas afectadas por los efectos de la pavimentación de la carretera BR-364, entre Porto Velho, la capital de Rondonia y Rio Branco, la capital de Acre, con una distancia de aproximadamente 500 km. Los cinco componentes son el ordenamiento territorial a través de la preparación de mapas, la creación de áreas de protección ambiental, la fiscalización y monitoreamiento de medios de control sobre el medio ambiente, educación ambiental y reforestamiento, y proyectos de apoyo a reservas indígenas. El Banco aprobó en el año de 1985 un financiamiento que comprendía tanto la pavimentación de la referida carretera como la ejecución del PMACI. El proyecto comenzó a ejecutarse, pero después de aproximadamente tres años, nos encontramos con la situación en que aproximadamente la mitad de la carretera ya estaba pavimentada, pero que todavía no se habían cumplido adecuadamente con la condiciones referentes a la implantación del Programa PMACI. Esta falta de cumplimiento resultó en una medida muy severa de parte del Banco, o sea, la suspensión de los desembolsos para esta operación, medida raramente tomada por el Banco, pero que se consideraba necesaria dada la gravedad de las circunstancias involucradas en este caso.

Durante un período de aproximadamente un año, tanto las autoridades brasileñas como las del Banco buscaban soluciones para poder resolver el problema y renovar la ejecución del proyecto y la tramitación de desembolsos. Este ejercicio de negociación fue apoyado por organismos no gubernamentales tanto nacionales como extranjeros, que colaboraran en este proceso. Finalmente, en junio de 1989, llegamos a una resolución satisfactoria del problema con la presentación por parte de las autoridades brasileñas del Plan de Acción Definitivo para llevar a cabo el PMACI.

Debido en parte al hecho de que ese año coincidía con el fin del Gobierno anterior, y el próximo año de 1990 coincidía con el establecimiento del nuevo Gobierno que actualmente se encuentra en el poder, el PMACI sufrió otro año y medio de inactividad, hasta poder restablecerse los mecanismos institucionales y financieros internos del Gobierno brasileño para retomar la ejecución del PMACI. Es muy importante resaltar también que este período coincidía con cambios muy importantes en el sector del medio ambiente, incluyendo la creación de la Secretaria del Medio Ambiente de la Presidencia de la República, y el nombramiento de nuevas autoridades con un compromiso muy especial con el medio ambiente. Debido a estas circunstancias, comenzó a modificarse la forma de ejecución del PMACI. El impacto más importante en este proceso de adaptación fue la gradual descentralización de la ejecución del proyecto, dependiendo cada vez

menos de los organismos nacionales públicos en Brasilia y cada vez más de organismos no-gubernamentales en el área de influencia del proyecto.

Este cambio no fue simplemente un ajuste institucional sino también filosófico, en reconocimiento de la importancia, tal como hemos comentado anteriormente, de tomar en cuenta las necesidades de la poblaciones locales y utilizar los organismos que representan dichas comunidades en la articulación y ejecución de los proyectos que las afectan. Este cambio de filosofia resultó en la subcontratación de la mayoría de las actividades del PMACI, a aproximadamente 20 organismos no-gubernamentales en el área de influencia del proyecto. El resultado fue impresionante. Un proyecto que durante casi cinco años no había tenido mayores resultados, avanzó aceleradamente entre fines de 90 y fines de 91, y en este momento aproximadamente un 75% a 80% de las metas del PMACI están cumplidas. El Banco se encuentra en este momento considerando una extensión del plazo de ejecución del proyecto con la esperanza y expectativa de que el Programa se termine exitosamente en el de curso de 1992.

Queríamos compartir esta experiencia con Ustedes ya que consideramos que es una demonstración de que el fortalecimiento de los derechos de todas las comunidades más afectadas por inversiones de desarrollo pueden tener un efecto muy positivo sobre el medio ambiente. Una vez más, quiero agradecerles esta oportunidad y felicitarlos por el éxito de este Seminario.

PARTE / PART II

CONFERENCIAS / LECTURES

Sustainable Development and Human Rights

ALEXANDRE KISS

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.

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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 garantee 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.

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(4) 29 *I.L.M.* 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 meausures 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)

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(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:

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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

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(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.

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(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 techological 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.

Environment and Development: Formulation and Implementation of the Right to Development as a Human Right(*)

ANTÔNIO AUGUSTO CANÇADO TRINDADE

I. Introductory Remarks: Human Rights and the Environment

In a recent study we have drawn attention to affinities in the parallel evolutions of human rights protection and of environmental protection(1) which seem deserving of closer attention. International regulation in both domains of protection has taken place in the form of *responses* to specific challenges or threats; one and the other have undergone a process of *internationalization* and, more recently, of *globalization*(2). The indivisibility of human rights, and the emergence of global environmental issues, as common concern of mankind(3), bear witness of this phenomenon. The globalization of the regimes of human rights protection and environmental protection(4) heralds the decline and end of reciprocity in those domains and the emergence of *erga omnes* obligations.

(*) The present text, which served as basis for one of the Author's lectures in the Inter-American Seminar on Human Rights and the Environment (Brasília, 4-7 March 1992), forms part of a book currently in the course of preparation by the Author on *"Human Rights Protection and Environmental Protection: A Parallel"*.

(1) A.A. Cançado Trindade, "The Parallel Evolutions of International Human Rights Protection and of Environmental Protection and the Absence of Restrictions upon the Exercise of Recognized Human Rights", 13 *Revista del Instituto Interamericano de Derechos Humanos* (1991) pp. 35-76.

(2) Cf. *ibid.*, pp. 37-47.

(3) Cf. A.A. Cançado Trindade and D. Attard, "The Implications of the 'Common Concern of Mankind' Concept on Global Environmental Issues", *in Policies and Laws on Global Warning: International and Comparative Analysis* (ed. T. Iwama), Tokyo, Environmental Research Center, 1991, pp. 7-13; and cf. UNEP, *The Meeting of the Group of Legal Experts to Examine the Concept of the Common Concern of Mankind in Relation to Global Environmental Issues* (Malta, 1990), Valletta/Nairobi, 1991, Report by A.A. Cançado Trindade and D. J. Attard, pp. 19-26.

(4) On the relationship between human rights and the environment, cf. further A.A. Cançado Trindade, *Human Rights and the Environment*, Report commissioned by UNEP's Environmental

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Just as concern for human rights protection can be found in the realm of international environmental law (Preamble and Principle 1 of the 1972 Stockholm Declaration on the Human Environment, Preamble and Principles 6 and 23 of the 1982 World Charter for Nature, Principles 1 and 20 proposed by the World Commission on Environment and Development in its 1987 report)(5), concern for environmental protection can also be found in the express recognition of the right to a healthy environment in two recent human rights instruments, namely: the 1988 Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Article 11), and the 1981 African Charter on Human and Peoples' Rights (Article 24); in the former, it is recognized as a right of "everyone" (§ 1), to be protected by the States Parties (§ 2), whereas in the latter it is acknowledged as a peoples' right(6).

Concern for the protection of the environment can nowadays be likewise found in the realm of international humanitarian law, namely: Articles 35(3) and 55 of the 1977 Additional Protocol I to the 1949 Geneva Conventions (prohibition of methods or means of warfare severely damaging the environment), added to the 1977 U.N. Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques, and to the 1982 World Charter for Nature (paragraphs 5 and 20), among other provisions(7). Likewise, recent developments in international refugee law are worthy of attention, such as the possible assimilation of victims of environmental disasters to protected [displaced] persons under refugee law (e.g., the 1984 Cartagena Declaration on Refugees, recommending for use in Central America an expanded concept of refugee)(8).

In fact, the fundamental rights to life and to health lie at the basis of the *ratio legis* of international human rights law and of environmental law. Taken in its wide and proper dimension, the fundamental right to life comprises the right of every

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Law and Institutions Programme Activity Center, Nairobi/Brasília, 1991, pp. 1-22 (restricted circulation); and cf. UNEP, *Beijing Symposium on Developing Countries and International Environmental Law* (August 1991), Beijing/Nairobi, 1991, Report by A.A. Cançado Trindade and A. Malhotra, p. 7.

(5) Cf. A.A. Cançado Trindade, "The Contribution of International Human Rights Law to Environmental Protection, with Special Reference to Global Environmental Change", *in Environmental Change and International Law: New Challenges and Dimensions,* (ed. E. Brown Weiss), Tokyo, United Nations University (UNU), 1992, 93 pp. (in print).

(6) Cf. *ibid.* (in print).

(7) Cf. *ibid.*

(8) Furthermore, the protection of vulnerable groups (e.g., indigenous populations, ethnic and religious and linguistic minorities, mentally and physically handicapped persons) appears today at the confluence of international human rights law and international environmental law: as we have indicated in another study, concern for the protection of vulnerable groups can nowadays be found in international instruments and initiatives pertaining to both human rights protection and environmental protection, where the issue has been approached on the basis of both human and environmental considerations (cf. references and sources *in ibid.*) - (in print).

human being not to be deprived of his life (right *to life*, belonging to the realm of civil and political rights)[9] and the right of every human being to have the appropriate means of subsistence and a decent standard of life (preservation of life, right *of living*, belonging to the domain of economic, social and cultural rights)[10]. It affords an eloquent illustration of the indivisibility and interrelatedness of all human rights. International supervisory organs such as the Human Rights Committee (on distinct occasions) and the European Commission of Human Rights (e.g., in the *Association X versus United Kingdom* case, 1978) have espoused the view that the right to life imposes upon States also *positive* measures to protect life[11].

II. The Significance of the Recognition of the Right to a Healthy Environment

From this perspective, the right to a healthy environment appears as a natural extension of the right to life, in so far as it safeguards human life itself under the two aspects of the physical existence and health of human beings, and the dignified conditions and quality of life. The right to a healthy environment thus encompasses and enlarges the right to health and the right to an adequate standard of living[12]. In

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(9) Cf. U.N. Covenant on Civil and Political Rights, Article 6 (1); European Convention on Human Rights, Article 2; American Convention on Human Rights, Article 4(1); African Charter on Human and Peoples' Rights, Article 4.

(10) Cf. U.N. Covenant on Economic, Social and Cultural Rights, Articles 11-12, following Article 25(1) of the 1948 Universal Declaration of Human Rights.

(11) In its general comments 6(16), of 1982, and 14(23), of 1985, the Human Rights Committee has advanced a particularly wide interpretation of the right to life (as enshrined in Article 6 of the U.N. Covenant on Civil and Political Rights) to the point of expressing its concern with the current proliferation of weapons of mass destruction representing one of the "gravest threats" to the right to life which "confronts mankind" today. And both the U.N. General Assembly and the Inter-American Commission of Human Rights have on distinct occasions been attentive to address the requirements of *survival* as component of the right to life. In this respect, the U.N. General Assembly (resolution 37/189A, of 1982) as well as the U.N. Commission on Human Rights (resolutions 1982/7, of 1982, and 1983/43, of 1983) have firmly propounded that *all individuals* and *all peoples* have an inherent and foremost right to life, the safeguard of which is an essential condition for the enjoyment of the entire range of civil and political, as well as economic, social and cultural rights; this brings to the fore the safeguard of the right to life of all persons as well as of all human collectivities, with special attention to the requirements of survival (as component of the right to life) of vulnerable groups. Cf. A.A. Cançado Trindade, "The Parallel Evolutions...", *op. cit. supra* n. (1), pp. 50-59, and sources referred to therein.

(12) It should not pass unnoticed that the 1989 Hague Declaration on the Atmosphere, for example, expressly refers to the right *to live* (§§ 1 and 5), seemingly well in keeping with the proper

sum, the basic right to life, encompassing the right of living, entails negative as well as positive obligations in favour of preservation of human life. Its enjoyment is a precondition of the enjoyment of other human rights. It belongs at a time to the realm of civil and political rights, and to that of economic, social and cultural rights, thus illustrating the indivisibility of all human rights. It establishes a "link" between the domains of international human rights law and environmental law. It inheres in all individuals and all peoples, with special attention to the requirements of survival. It has as extensions or corollaries the right to a healthy environment and the right to peace (and disarmament). It is closely related, in its wide dimension, to the right to development as a human right (right to live with fulfilment of basic human needs). And it lies at the basis of the ultimate *ratio legis* of the domains of international human rights law and environmental law, turned to the protection and survival of the human person and mankind.

Inextricably interwoven with the right to life itself, the right to health entails *negative* obligations (not to practice any act which can endanger one's health, thus linking this basic right to the right to physical and mental integrity and to the prohibition of torture and of cruel, inhuman of degrading treatment(13)) as well as *positive* obligations (to take all appropriate measures to protect and preserve human health(14), including measures of prevention and treatment of diseases). It thus partakes the nature of at a time an individual and a social right: it is, like the right to life, an individual right in that it requires the protection of the physical and mental integrity of the individual, and it is also a social right in that it imposes on the State and society the collective responsibility for the protection of public health. The right to health, thus properly understood, affords, like the right to life, a vivid illustration of the indivisibility and interrelatedness of all human rights. It can hardly be doubted that environmental degradation constitutes a collective threat to human health(15); in fact, the protection of the whole of the biosphere as such

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understanding that the right to life entails negative as well as positive obligations as to preservation of human life.

(13) As recognized and provided for in the U.N. Covenant on Civil and Political Rights, Article 7; the European Convention on Human Rights, Article 3; the American Convention on Human Rights, Articles 4-5.

(14) Cf. U.N. Covenant on Economic, Social and Cultural Rights, Article 12; European Social Charter, Article 11; besides WHO and ILO resolutions on specific aspects.

(15) The collection *Case Law on the European Social Charter*, for example, contains illustrative views of the Committee of Independent Experts pertaining to the content and extent of the right to protection of health as enshrined in Article 11 of the 1961 European Social Charter. Reference could also be made to the 1973 Draft Protocol to the European Convention on Human Rights, prepared by H. Steiger, which provided for the protection of life and health as encompassing well-being (Article 1(1)) and the protection of individuals against acts of other private persons (Article 2), which remains the sole existing proposal on the matter to date (in so far as the European Convention system is concerned). Cf. A.A. Cançado Trindade, "The Parallel Evolutions...", *op. cit. supra* n. (1), pp. 61-62.

entails the protection of human beings, and the right to a healthy environment comes to enhance the protection of other recognized human rights[16] (cf. *infra*).

If the right to a healthy environment is taken not as the - virtually impossible - right to an ideal environment but rather as the right to the conservation - i.e., protection and improvement - of the environment, it can then be implemented like any other individual right: it is then taken as a "procedural" right, the right to a due process before a competent organ, and thus assimilated to any other right guaranteed to individuals and groups of individuals. This right entails, as corollaries, the right of the individual concerned *to be informed* of projects and decisions which could threaten the environment[17] (the protection of which counting on preventive measures), and the right of the individual concerned *to participate* in the taking of decisions which may affect the environment (active sharing of responsibilities in the management of the interests of the whole collectivity)[18]. To the rights to information and of participation one can add the *right to available and effective domestic remedies*. The 1982 World Charter for Nature, it may be recalled in this respect, does in fact provide (§ 23) that all persons are to have the opportunity to participate - individually or with others - in the formulation of decisions of direct concern to their environment, and furthermore are to have access to means of redress when their environment has suffered damage or degradation.

1. "Sustainable Development" as a Link between the Right to a Healthy Environment and the Right to Development

The right to a healthy environment can hardly be approached in isolation. It has found expression in the conceptual universe of human rights. It cannot be

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(16) At global level, the *E.H.P. versus Canada* case (1982), decided by the Human Rights Committee under the U.N. Covenant on Civil and Political Rights and [first] Optional Protocol bore witness of the interrelatedness between environmental protection and human rights protection, in particular when fundamental rights, such as the rights to life and to health, are at stake. Cf. International Covenant on Civil and Political Rights, *Selected Decisions of the Human Rights Committee under the Optional Protocol*, vol. 2, N.Y., U.N., 1990, doc CCPR/C/OP/2, pp. 20-22.

(17) On the possibility of interpreting the European Convention on Human Rights as containing (as from the provisions of, e.g., Articles 10, 8 and 2) the right to environmental information, and for the suggestion that this right be embodied in a possible new Additional Protocol to the European Convention, cf. S. Weber, "Environmental Information and the European Convention on Human Rights", 12 *Human Rights Law Journal* (1991) pp. 177-185.

(18) A. Ch. Kiss, "Le droit à la qualité de l'environnement: un droit de l'homme?", *Le droit à la qualité de l'environnement: un droit en devenir, un droit à définir* (ed. N. Duplé), Vieux-Montréal/Québec, Éd. Québec/Amérique, 1988, pp. 69-87; and cf. A. Ch. Kiss, "Peut-on parler d'un droit à l'environnement?", *Le droit et l'environnement - Actes des Journées de l'Environnement du C.N.R.S.* (1988) pp. 309-317.

considered without reference to another right of the kind, namely, the right to development as a human right. It may well be that the principle of *sustainable development* - which, in the view of the Brundtland Commission, calls for meeting the needs and aspirations of the present without compromising the ability of future generations to meet their own needs - provides a possible link between the right to development and the right to a healthy environment. It emphasizes that environment and development go together, that applying to developed as well as developing regions of the world, creating obligations for all bearing in mind the international community as a whole, and present as well as future generations: in this sense *sustainable development* has come to be regarded not only as a concept, but as a principle of contemporary international law(19).

The U.N. General Assembly, in deciding to convene the 1992 U.N. Conference on Environment and Development (resolution 44/228, of 22 December 1989) asserted and insisted on the promotion of sustainable and environmentally sound development in all countries(20). In fact, assertions of the interrelatedness of environment and development have come from all corners. At regional level, to recall a few examples, the 1988 Berlin Round-Table on Environment, Natural Resources and North-South Interdependence for example, stated that sustainable development was "needed both in the North and in the South", and it required that those who were more affluent adopted "lifestyles compatible with the planet's finite ecological means"; it drew attention to the "environmental dimension in development projects" and added that "development activities must be socially, culturally and environmentally compatible"(21). The Beijing Ministerial Declaration on Environment and Development, of June 1991, on its turn, expressing the views of 41 participating developing countries, began by attributing the acceleration of environmental degradation to "unsustainable development models and life-styles" (§ 1) and by stressing the need to integrate environmental protection with the imperatives of sustainable development as a matter of common concern of mankind (§§ 2-3); it then warned that the environmental problems of the developing countries arose from the conditions of poverty, and that sustainable development and steady economic growth constituted " a way to break this cycle of poverty and environmental degradation and to strengthen the capabilities of the developing countries for environmental protection" (§ 4). In emphasizing the interrelationship between environment and development issues (§§ 25-26), the Beijing Declaration further stated that as poverty was "at the root of the environmental problems of the

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(19) Nagendra Singh, "Sustainable Development as a Principle of International Law", *International Law and Development* (ed. P. De Waart, P. Peters and E. Denters), Dordrecht, Nijhoff, 1988, pp. 2-5.

(20) Cf. G.A. resolution 44/228, of 22 December 1989, paragraphs 3, 6, 12 and 15(c) and (i).

(21) Council of Europe, *Results of Round-Tables and Other European Events in the Context of the North-South Campaign*, doc. CEO/NS/TR (88) 10, Strasbourg, C.E. Secretariat, 1988, pp. 34-35 and 38.

developing world" (§ 27), it was necessary to keep pursuing endeavours to attain "better quality of life and environmental well-being" and "to protect the environment without hindering the development process" (§§ 30 and 32).

More recently, the Beijing Symposium on Developing Countries and International Environmental Law, of August 1991, co-sponsored by UNEP, the Chinese Ministry of Foreign Affairs in cooperation with the United Nations and the Chinese Society of International Law in the framework of the U.N. Decade of International Law, acknowledged in its final report(22) that environment and development were indivisible and could not be considered in isolation from each other, the concept of common concern of mankind relating both to environment and to development (p. 4). The Beijing Symposium report reckoned that the environmental problems of developing countries were "often a reflection of the inadequacy of development", and drew attention to the "vicious circle linking poverty, underdevelopment and environmental degradation"; it added that sustainable development included the fostering of economic growth, the meeting of basic domestic human needs (e.g., those pertaining to health, nutrition, education, housing) and "the eradication of poverty so as to provide to all a life of dignity in a clean, safe and healthy environment". In this respect, the report asserted that "there were linkages" between the domains of environmental protection and of human rights protection "provided mainly by the focus on certain fundamental rights (*inter alia*, the right to life and the right to health)" and that "the emergence of the right to a healthy environment and the right to development was meant to enhance, rather than to restrict, other rights, given their indivisibility and interrelatedness" (p. 5).

Reference could also be made to the Ministerial Declaration on Enviromentally Sound and Sustainable Development, adopted by the Bangkok Meeting of October 1990, reflecting the views of countries in Asia and the Pacific region. As a follow-up of that Ministerial Meeting, a Meeting of Senior Officials, convened in Bangkok in February 1991, adopted a report to the Economic and Social Commission for Asia and the Pacific (ESCAP) in which it pointed out the "environment-development interaction" (§ 21 (d)), and addressed *inter alia* the issues of human health and quality of life (§ 52); as "poverty and underdevelopment are the major causative factors of environmental problems for the developing countries in the region", the major objective of the strategy of these latter - the report added - was "to ensure sustainable development for meeting basic human needs for survival and for improvement in the quality of life" (§ 21 (a)).

In its turn, the Brasilia Declaration on the Environment, adopted at the Latin American and Caribbean Summit (VI Ministerial Meeting) of March 1989, affirmed that the improvement of economic and social conditions of life was "the key to preventing the defacement of the environment" in the countries of the region (§ 3). Likewise, the Action Plan for the Environment in Latin America and the Caribbean,

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(22) *Rapporteurs* A.A. Cançado Trindade (Brazil) and A. Malhotra (India).

adopted by the VII Ministerial Meeting on the Environment in Latin America and the Caribbean (held in Port-of-Spain, Trinidad and Tobago, in October 1990), recalled the Brasilia Declaration and insisted on the "inseparable linkage" between environmental concerns and the development model (§§ 3-4 of "Call to Action")[23]. The Tlatelolco Platform on Environment and Development, adopted at the Latin American and Caribbean Regional Ministerial Preparatory Meeting of March 1991 for the 1992 U.N. Conference on Environment and Development went further than the 1989 Brasília Declaration (*supra*), in identifying priority concerns of the countries of the region calling for their joint action for the 1992 Conference (§§ 24-25). The 1991 Tlatelolco Platform acknowledged the link between poverty and environmental degradation (§§ 18 and 24 (g)) and the link between such degradation and unsustainable development models (§§ 2, 4, 6 and 9); it called for the incorporation of the "environmental dimension" as a basic component of the process of sustainable and equitable development (§§ 23 and 13) and then drew attention to the related relevance of observance of human rights.

In that respect, the Tlatelolco Platform emphasized the region's "significant achievements in strengthening democratic processes, preserving peace and promoting respect for human rights" (§ 3), as well as the need to secure "access to decent living conditions, adequate levels of social organization and political representation and the genuine participation of the population in the definition of its own development" (§ 18). The Tlatelolco Platform insisted on "the essential need for the active commitment of all sectors of society in order to promote environmental protection and enhancement and sustainable development" (§ 21). There was thus, in sum, clear recognition of the interrelationship between environmental protection, sustainable development and human rights promotion and protection.

Last but not least, the report "*Our Own Agenda*" (1990), prepared by the Latin American and Caribbean Commission on Development and Environment, to develop a regional outlook on the issue of the environment prior to the 1992 U.N. Conference on Environment and Development, likewise drew attention to the relevance to that central issue of securing respect for human rights. The report stated categorically that "to speak of human rights (including the right to eat, to housing, to education, to health, and to income), of the environment, or of support for democracy and cultural diversity is infinitely more logical from the human perspective" (p. 11). The report "*Our Own Agenda*" next warned in this connection that "our region has experienced a democratization process that should be sustained. The broad participation of civilian society is essential if we are to

(23) The participating countries in the VII Ministerial Meeting further stated, *inter alia*, that there was "an unbreakable bond between environmental deterioration and poverty", and that "environmental protection must become an integral part of the economic, social and cultural development of the nations of the region". Document UNEP/LAC-IG-VII/4, of 23.10.1990, Annex II, pp. 3-4.

achieve development with equity" (p. IX). Sustainable development will thus not be possible without real democracy: it will be "impossible to break down the barriers that stand in the way of economic, social and ecologically viable development" without a "democracy that permits greater participation by society" (p. 45). Achievement of sustainable development should be "the joint responsibility of State and society", what pressupposes the existence of a well-informed society, a social mobilization on behalf of sustainable development, and "the citizens' ability to control the State"; a participating democracy is characterized by "a proliferation of organizations which serve as intermediaries between the State and society" (pp. 72-75).

The regional Latin American and Caribbean report went on to identify distinct ways to strengthen the constitutional State, namely: first, the development of adequate environmental legislation(24) (with corrective as well as - and mainly - preventive measures, also requiring environmental impact studies); second, the introduction of reforms that make "the judicial power truly autonomous"; and third, the establishment of the basis for "a legal system that protects the citizens against abusive exercises of power" (pp. 78-79). Significantly, the report "*Our Own Agenda*" emphasized that the central objective of the new strategy to stimulate sustainable development pursuant to such regional outlook "can be none other than the improvement of the quality of life of the population. If we are to improve the quality of life, we must, first and foremost, face up to the abject poverty which currently affects the bulk of the population. We cannot talk of improving the environment as long as such a sizeable segment of our people lives in conditions of extreme poverty" (p. 45). In sum, the fundamental aim of the economic and social strategy is "to enhance the well-being of most of the population to the fullest", in conformity with the "objectives of sustainable development", leading necessarily to a "more egalitarian society" (p. 68). The regional report thus clearly stressed the link between pursuance of ecologically sustainable development and enhancement of human rights, in particular economic and social rights.

Moving from the regional to the global level, it may be recalled that the concept - or principle - of "sustainable development" occupied a central place in the already-mentioned 1987 report of the World Commission on Environment and Development; the relevant passages of the Brundtland Commission report, besides linking environmental and developmental considerations, addressed the issues of elimination of poverty and satisfaction of essential human needs(25). The Brundtland Commission report is permeated with considerations of [inter - and

(24) For a recent study of environmental legislation in Latin American and Caribbean countries, cf. Inter-American Development Bank, *Institutional and Legal Aspects of the Environment in Latin America, Including the Participation of Non-governmental Organizations in Environmental Management*, Washington, Inter-American Development Bank, 1991, pp. 11-47 and 104-105.

(25) Cf. World Commission on Environment and Development, *Our Common Future*, Oxford, University Press, 1987, pp. 75-90, 40, 43-66 and 8-9.

intra-generational] equity[26], social justice[27], regulated access to resources and human resource development[28], effective community and citizen participation[29], wide and effective international cooperation "to manage ecological and economic interdependence"[30]; it sets policy directions to attain sustainable development in six areas, namely, population and human resources, food security, the loss of species and genetic resources, energy, industry, and human settlements (the urban challenge)[31]. The Commission also refers to international humanitarian law[32], and attempts to formulate the fundamental human right to an adequate and healthy environment[33].

The Brundtland Commission report is particularly emphatic in insisting that the very concept of sustainable development requires the erradication of widespread or extreme poverty and the adoption by the more affluent of life-styles considerably less consumist and more consonant with the world's [limited] ecological means[34]: in the endeavours towards sustainable development, "overriding priority" should be given to the "essential *needs* of the world's poor"[35], as "poverty, injustice, environmental degradation, and conflict interact in complex and potent ways"[36]. After all, development and environmental protection go together, in an indivisible and integrated way; they cannot be considered in isolation from each other, and they are both regarded today as being together of common concern of mankind.

The 1991 *Human Development Report* of the United Nations Development Programme (UNDP), referring to sustainable development, likewise warned as to the interrelationship between poverty and environmental degradation[37]. In its turn, the 1987 UNEP report on "Environmental Perspective to the Year 2000 and Beyond", addressing sustainable development, also asserted that "environmental issues are closely intertwined with development policies and practices"[38], and further warned: "since mass poverty is often at the root of environmental degradation, its elimination and ensuring equitable access of people to

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(26) *Ibid.*, p. 52.
(27) *Ibid.*, pp. 40 and 49.
(28) *Ibid.*, p. 11.
(29) *Ibid.*, pp. 63 and 65.
(30) *Ibid.*, p. 9, and cf. pp. 301 and 65.
(31) Cf. *ibid.*, pp. 95-258 and 11.
(32) Cf. *ibid.*, pp. 290 and 294-300.
(33) Cf. § 1, *in ibid.*, Annex 1, p. 348.
(34) *Ibid.*, pp. 8-9, and cf. pp. 29-31, 40 and 49.
(35) *Ibid.*, p. 43 (emphasis added), and cf. p. 54.
(36) *Ibid.*, p. 291.
(37) PNUD, *Desarrollo Humano: Informe 1991*, Bogotá, PNUD/Tercer Mundo Ed., 1991, pp. 184-185.
(38) UNEP/Governing Council, *Environmental Perspective to the Year 2000 and Beyond*, doc. UNEP/GC. 14-26, 1987, Annex II, p.4.

environmental resources, are essential for sustained environmental improvements"[39]. The UNEP report acknowledged the need for "more concern for human progress and social justice as factors influencing human resources development and environmental improvement"[40], and called for the provision by governments of basic health and housing development as an integral part of environmental management of resources so as to ensure better quality of life for their people[41]. In the view of the UNEP report, "poverty-focused projects which improve the environment should receive greater attention in development co-operation"[42].

Sustainable development discloses a pronounced temporal dimension; in fact, an essential element of sustainability is the basic general obligation to look into the future[43]. In the acknowledgement and assertion of the requirements of survival and of superior common principles and values and common responsibilities, one can witness the notion evolving in contemporary international law that "obligations and entitlements are no longer the sole attributes of States but first and foremost pertain to human beings and to peoples"[44]. Bearing this in mind, we can turn our attention to the significant formulation, at global (United Nations) level, of the right to development as a human right, as this latter - as already pointed out - is directly related to the right to a healthy environment.

The 1986 U.N. Declaration on the Right to Development[45] states quite clearly that "the human person is the central subject of development and should be

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(39) *Ibid.*, p. 3, and cf. p. 6.

(40) *Ibid.*, p. 5.

(41) *Ibid.*, p. 24, and cf. pp. 21-22, 34 and 37.

(42) *Ibid.*, p. 27.

(43) Nagendra Singh, *op.cit. supra* n. (19), p. 6.

(44) Th. Van Boven, "Fundamental Rights and Nuclear Arms", 19 *Denver Journal of International Law and Policy* (1990) pp. 58-59; and cf. R. Müllerson, "Right to Survival as Right to Life of Humanity", 19 *Denver Journal of International Law and Policy* (1990) pp. 48-50.

(45) Adopted by General Assembly resolution 41/128, of 04 December 1986, with 146 votes in favour, one against, and 8 abstentions, and containing a preamble with 17 paragraphs and 10 Articles in its operative part. - For an account of the drafting of the Declaration, cf., e.g., *inter alia*, M. Bulajic, *Principles of International Development Law*, Dordrecht, M. Nijhoff, 1986, pp. 332-345; J. Alvarez Vita, *Derecho al Desarrollo*, Lima, Cult. Cuzco Ed., 1988, pp. 8-108; M.M. Kenig-Witkowska, "The U.N. Declaration on the Right to Development in the Light of its *Travaux Préparatoires*", *International Law and Development* (ed. P. De Waart, P. Peters and E. Denters), Dordrecht, M. Nijhoff, 1988, pp. 381-388. For recent reassessments of the Declaration, cf., generally: Ph Alston, "Making Space for New Human Rights: The Case of the Right to Development", 1 *Harvard Human Rights Yearbook* (1988) pp. 3-40; G. Abi-Saab. "Le droit au développement", 44 *Annuaire suisse de droit international* (1988) pp. 9-24; B.G. Ramcharan, "The Role of the Development Concept in the U.N. Declaration on the Right to Development and in the U.N. Covenant", *International Law and Development* (ed. P. De Waart P. Peters and E. Denters), Dordrecht, M. Nijhoff, 1988, pp. 295-303; J. Crawford, "The Rights of Peoples: Some Conclusions", *The Rights of Peoples* (ed. J. Crawford), Oxford, Clarendon Press, 1988, pp. 172-

the active participant and beneficiary of the right to development" (Article 2 (1), and preamble). It qualifies the right to development as "an inalienable human right" of "every human person and all peoples" (Article 1), by virtue of which they are "entitled to participate in, and contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized" (Article 1 (1)).

The Declaration addresses itself repeatedly to States, urging them to take all necessary measures for the realization of the right to development (Articles 3 (3), 4, 5, 6, 7 and 8). Responsibility for the realization of the right to development is placed primarily on States (Article 3 (1)), "individually and collectively" (Article 4 (1)), but also on all human beings, "individually and collectively" (Article 2 (2)), i.e., individuals and communities. The Declaration envisages measures and activities at *both national* and *international* levels (Articles 3 (1), 4, 8 and 10) for the realization of the right to development. The Declaration thus encompasses a wide and complex range of relationships meant to contribute to the realization of the right to development.

II. Subjects, Legal Basis and Contents of the Right to Development as a Human Right

The 1986 Declaration clarified to some extent the key questions of the *subjects, legal basis* and *contents* of the right to development, much discussed in the preparatory work of the Declaration and in expert writing in the years which preceded it[46]. As to the *subjects*, it is noteworthy that the Declaration, as pointed out, proclaims the right to development as an *inalienable humar* right, by virtue of which *every human person* and *all peoples* are entitled to enjoy economic, social, cultural and political development. The active subjects or beneficiaries of the right to development are thus the human beings and peoples. In addition, like what happens in contemporary formulation of other rights pertaining to human collectivities, or to the human person in society, or "l'homme ou peuple situé",

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174; Ian Brownlie, *The Human Right to Development*, London, Commonwealth Secretariat (Occasional Papers), 1989, pp. 1-25; A.A. Cançado Trindade, "Legal Dimensions of the Right to Development as a Human Right: Some Conceptual Aspects", 12 *Revista del Instituto Interamericano de Derechos Humanos* (1990) pp. 81-95.

(46) Cf. the papers by R. Ago, R. Zacklin, G. Abi-Saab and A. Eide, *in Le Droit international au développement au plan international - Colloque (1979)*, Hague Academy of International Law (hereinafter quoted *Hague Colloquy*), The Hague, Sijthoff/Nijhoff, 1980, pp. 7-8 (Ago), 117-118 (Zacklin), 162-164 and 168-170 (Abi-Saab), and 402-403 and 415 (Eide).

distinct sets of obligations[47] may be distinguished: in the present context, the responsibilities ascribed by the Declaration to States, individually and collectively, and, as counterpart of the human right to development, the responsibilities incumbent also upon human beings, individually and collectively (communities, associations, groups). The passive subjects of the right to development are thus those who bear such responsibilities, with emphasis on the obligations attributed by the Declaration to States, individually and collectively (the collectivity of States).

Possibly the major significance of the Declaration on the Right to Development lies in its recognition or assertion of the right to development as an "inalienable *human* right". The emerged formulation and acknowledgement of this right of the human person and of peoples was intuitively forecasted or anticipated by a few authors some years ago[48]. But even nowadays, in the first years following the Declaration, some precision is required as to the *legal basis* and *contents* of the right to development. The Declaration contains elements which are already embodied, *mutatis mutandis*, both in human rights instruments proper (such as, e.g., the 1948 Universal Declaration, the two U.N. Covenants on Human Rights, and U.N. resolutions of various kinds on the subject) and in sources of the international development law (such as the 1974 Charter of Economic Rights and Duties of States, the 1974 Declaration - and Programme of Action - on the Establishment of a New International Economic Order, and relevant U.N. General Assembly resolutions)[49].

It is important to keep in mind the distinction between the "international law *of* development" ("droit international *du* développement"), and the "right *to* development" ("droit *au* développement") as a human right as proclaimed in the 1986 Declaration. The former, with its various components (right to economic self-determination, permanent sovereignty over natural wealth and resources, principles

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(47) I.J. Koppen and K.-H. Ladeur, *Environmental Rights*, Florence, European University Institute, [1989], p. 33 (2 nd draft, internal circulation).

(48) Kéba M'Baye, "Le droit au développement comme un droit de l'homme", 5 *Revue des droits de l'homme/Human Rights Journal* (1972) pp. 505-534; J.A. Carrillo Salcedo, "El Derecho al Desarrollo como Derecho de la Persona Humana", 25 *Revista Española de Derecho International* (1972) pp. 119-125.

(49) Cf., e.g., Jorge Castañeda, "La Charte des droits et des devoirs économiques des États", 20 *Annuaire français de droit international* (1974) pp. 31-77; P.M. Martin, "Le nouvel ordre économique international", 80 *Revue générale de droit international public* (1976) pp. 502-535; P.J.I.M. de Waart, "Permanent Sovereignty over Natural Resources as a Cornerstone for International Economic Rights and Duties", 24 *Netherlands International Law Review* (1977) pp. 304-322; A.A. Cançado Trindade, "As Nações Unidas e a Nova Ordem Econômica Internacional", 81 *Revista de Informação Legislativa* - Brasília (1984) pp. 213-232; H. Hohmann, "Justice sociale et développement pour le nouvel ordre économique international", 58-59 *Revue de droit international de sciences diplomatiques et politiques* (1980-1981) pp. 217-231 and 82-88, respectively.

of non-reciprocal and preferential treatment for developing countries and of participatory equality of developing countries in international economic relations and in the benefits from science and technology), emerges as an objective international normative system regulating the relations among *juridically equal* but *economically unequal States* and aiming at the transformation of those relations, on the basis of international cooperation (U.N. Charter, Articles 55-56) and considerations of equity, so as to redress the economic imbalances *among States* and to give *all States* - particularly the developing countries - equal opportunities to attain development(50). The latter, as propounded by the 1986 Declaration, and inspired in such human rights provisions as Article 28 of the 1948 Universal Declaration and Article 1 of both U.N. Covenants on Human Rights, appears as a subjective human right, embodying demands of the human person and of peoples which ought to be respected.

Three years after the adoption of the U.N. Declaration on the Right to Development, its significance has been acknowledged by some countries, in their comments and views on the implementation and further enhancement of the Declaration, forwarded to the U.N. Secretary-General and considered by the U.N. Commission on Human Rights in its 1989 session. According to some of those comments and views, the primary significance of the Declaration is reflected in the fact of its giving the right to development the status of an "inalienable human right" (Jamaica), its stressing the "all-embracing global" nature of the problem of development in our days linked to the observance of human rights (USSR), its awareness of the need of a "comprehensive realization" of *all* human rights (Yugoslavia), and its recognition of the interdependence of *all* human rights (Brazil and India)(51). Furthermore, the right to development focusses on the interaction between human rights and development issues(52), at last brought together.

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(50) M. Virally, "Vers un droit international du développement", 11 *Annuaire français de droit international* (1965) pp. 3-12; H. Gros Espiell, *Derecho Internacional del Desarrollo*, Valladolid, Univ. de Valladolid, 1975, pp. 11-47; P. Buirette-Maurau, *La participation du tiers-monde à l'élaboration du Droit international*, Paris, LGDJ, 1983, pp. 131-137, 160-167 and 185-202; Alain Pellet, *Le droit international du développement*, 2ème ed., Paris, PUF, 1987, pp. 3-124.

(51) U.N. doc. E/CN.4/AC.39/1989/1, of 21.12.1988, *Analytical Compilation of Comments and Views on the Implementation and Further Enhancement of the Declaration on the Right to Development Prepared by the Secretary-General*, pp. 4-9.

(52) Ph. Alston, "The Right to Development at the International Level", *Hague Colloquy, cit. supra* n. (46), p. 111. - And cf. J. - B. Marie and N. Questiaux, "Article 55 alinéa c", *La Charte des Nations Unies - Commentaire article par article* (ed. J.-P. Cot and A. Pellet), Paris-Bruxelles, Economica/Bruylant, 1985, pp. 863-883; Th. Van Boven, "Human Rights and Development - Rhetorics and Realities", *Progress in the Spirit of Human Rights - Festschrift für Felix Ermacora* (ed. M. Nowak, D. Steurer and H. Tretter), Kehl/Strasbourg, N.P. Engel Verlag, 1988, pp. 575-587.

III. Implementation (Mise-en-oeuvre) of the Right to Development as a Human Right

The formulation and assertion of the right to development lead then to the next question, that of its implementation or vindication. It should preliminarily be observed in this respect that the U.N. Declaration on the Right to Development itself was attentive to the *obstacles* to be overcome in order to provide equality of opportunity for development. The Declaration refers to the elimination of those obstacles in Articles 5 and 6(3) and two *consideranda* of the preamble, and identifies them as being: massive and flagrant violations of rights of human beings and peoples (ensuing from situations such as those resulting from *apartheid*, all forms of racism and racial discrimination, foreign domination and occupation, aggression, foreign interference and threats against national unity and sovereignty and territorial integrity), threats of war and refusal to recognize the fundamental right of peoples to self-determination.

In addition, the [U.N.] open-ended Working Group of Governmental Experts on the Right to Development, originally established in 1981 by the U.N. Commission on Human Rights, recently considered (1989) as further obstacles to be surmounted for the realization of the right to development the following: the arms race and the threat of nuclear holocaust, poverty and destitution, illiteracy, economic imbalances in international relations, the deterioration of the environment and the ecological balance, ideological and religious intolerance, different forms of violence, and natural disasters. On the other hand, it also considered, as factors which may foster the harmonious development of mankind, the progress in science and technology and the dissemination of knowledge and cultural values through information and communications media (so as to facilitate exchanges among men and cultures)(53).

Although the 1966 U.N. Covenant on Economic, Social and Cultural Rights falls short of expressly recognizing - especially in its Articles 11-12 - the right to development, it appears that its draftsmen did have in mind development issues when drafting the Covenant, the implementation of which being related to the development process of each country(54). Thus, the insufficient level of socio-economic development is one of the sources of difficulties in the realization of the

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(53) U.N. doc. E/CN.4/1989/10, of 13.02.1989, *Problems Related to the Right to Enjoy an Adequate Standard of Living - The Right to Development*, pp. 3-13. On the "individual" and "collective" dimensions of the right to development and the related theme of the external debt (of Latin American countries), cf., e.g., L. Diaz Müller, "El Derecho al Desarrollo y los Derechos Humanos", 4 *Revista del Instituto Interamericano de Derechos Humanos* (1986) pp. 5-13.

(54) B.G. Ramcharan, "The Role of the Development Concept in the U.N. Declaration on the Right to Development and in the U.N. Covenant", *in International Law and Development* (ed. P. De Waart, P. Peters and E. Denters), Dordrecht, Nijhoff, 1988, pp. 298-299 and 301.

rights recognized in the Covenant[55]. Thus, the significance of the right to development may be assessed in terms, e.g., of its impact on the fostering and operationalization of economic, social and cultural rights[56].

All development models ought to conform to international human rights standards; the disparities of socio-economic development among countries and peoples - further exacerbated, in the case of developing countries, by the external debt problem - constitute a threat to mankind[57]. All aspects of the right to development (set forth in the 1986 U.N. Declaration) are indivisible and interdependent, encompassing economic, social, cultural, as well as civil and political rights; conditions of life include such basic needs as food, health, housing, education, a healthy environment as well as personal freedom and security[58]. Poverty and underdevelopment amount to a denial of the totality of human rights - civil, political, economic, social and cultural. Without housing or resources, one can hardly consider the right to health or the freedom of movement; without the means to raise one's own chidren, the right to family life becomes dead letter; without education, one can hardly speak of freedom of expression or opinion and of association[59].

An aspect which was particularly emphasized in the recent U.N. Global Consultation on the Right to Development as a Human Right (Geneva, 1990) was the importance of *participation* of all individuals (in the contents and form of development) and of the much-needed *equality* in the distribution or sharing of the benefits of development (from the total activity of the society)[60]. Participation was viewed "as a means to an end and as an end in itself"; special measures were required "to protect the rights and ensure the full participation of particularly vulnerable sectors of society, such as children, rural people, and the extremely poor, as well as those which have traditionally experienced exclusion or discrimination, such as women, minorities and indigenous peoples"[61]. References were made in

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(55) *Ibid.*, pp. 299 and 301.

(56) Ph. Alston, "Some Notes on the Concept of the Right to Development", *in Essais sur le concept de "droit de vivre" en mémoire de Y. Khushalani* (ed. D. Prémont), Bruxelles, Bruylant, 1988, p. 84. On the "collective and communal characteristics" of African culture with an impact on its conception of the enjoyment of human rights, cf. T. Huaraka, "The African Charter on Human and Peoples' Rights: A Significant Contribution to the Development of International Human Rights Law", *in ibid.*, pp. 197, 201 and 204.

(57) U.N. Centre for Human Rights, *op. cit. infra* n. (60), pp. 46 and 27.

(58) Cf. *ibid.*, pp. 9-10, 44-45 and 49, and cf. pp. 15 and 42.

(59) *Ibid.*, p. 34.

(60) U.N. Centre for Human Rights, *The Realization of the Right to Development*, New York, U.N., 1991, pp. 25, 35-38 and 44.

(61) *Ibid.*, pp. 45-46, and cf. 53, 33 and 47.

this connection to the need of an "appropriate environmental and cultural framework" in each country(62).

The 1990 Global Consultation on the Right to Development, far from limiting itself to the States' domestic scene, also drew attention to the need, in the present domain, for "*greater transparency* in negotiations and agreements between States and international financial and aid institutions", for democratization of intergovernmental financial agencies; "relevant factors in assessing participatory process include the representativity and accountability of decision-making bodies, the decentralization of decision-making, public access to information, and responsiveness of decision-makers to public opinion"(63). It is significant that a Global Consultation convened by the U.N. Commission on Human Rights saw it fit to warn that "prevailing models of development have been dominated by financial rather than human considerations. These models largely ignore the social, cultural and political aspects of human rights and human development, limiting the human dimension to questions of productivity. They foster greater inequalities of power and control of resources among groups and lead to social tensions and conflicts. (...) The growing burden of indebtedness and structural adjustment falls heaviest on the poorest and weakest sectors of society and has clear human rights implications. (...) The prevailing terms of trade, monetary policy, and certain conditions tied to bilateral and multilateral aid, which are all perpetuated by the non-democratic decision-making processes of international economic, financial and trade institutions, also frustrate the full realization of the right to development as a human right"(64).

The same point was made, in two recent regional Seminars of the Inter-American Institute of Human Rights, held in Buenos Aires (1989) and in Brasília (1991), respectively. It was on those occasions warned that U.N. financial agencies (such as the IMF) did seem not to take into account provisions of U.N. human rights treaties and ILO conventions, and this created a paradox within the U.N. system: it was important that international financial agencies did not adopt measures - e.g., leading to persistent increases in the levels of unemployment and cost of living - which ran counter to the object and purpose of human rights treaties (adopted under the auspices of the U.N. itself and specialized agencies such as the ILO and the WHO)(65). The effects of recessionist policies and the grave concentration of income, leading to the impoverishment of the population, constituted a threat, if not a violation, of economic and social rights, and ultimately of the right to

(62) *Ibid.*, p. 53, and cf. pp. 47 and 45.

(63) *Ibid.*, pp. 50-51 (emphasis added).

(64) *Ibid.*, p. 48.

(65) Cf. *Derechos Económicos y Desarrollo en America Latina* (ed. J. Ordóñez and E. Vazquez), San José/Buenos Aires, IIDH, 1991, pp. 71 and 81-82.

development as a human right[66]. Furthermore, according to the sombre figures of the UNDP *Human Development Report* for 1991, the global distribution of income remains apalling: 77% of the world population earns 15% of its income, and the levels of unemployment remain high, well above those of the post-war period: unemployment has in fact become a chronic and long-term problem[67].

In fact, the right to development as a human right was, even before the 1986 U.N. Declaration, recognized expressly as such by a regional human rights Convention: the 1981 African Charter on Human and Peoples' Rights states in Article 22 that - "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" (§ 1). It adds that "States shall have the duty, individually or collectively, to ensure the exercise of the right to development" (§ 2). Such express recognition of the right to development as a human right in both the African Charter and the 1986 U.N. Declaration is most significant, as the question of its implementation can be addressed once the right to development is properly inserted - as it has been - in the framework of human rights[68]. Difficulties in that regard arise not only from its wide scope, covering a variety of entities and situations, and placing unequal burdens (heavier on industrialized States), but also from the fact that it finds its roots at a time partly in the tradition of human rights thinking (including the doctrine of collective rights) and partly in developments concerned with the establishment of a new international economic order[69].

In spite of the absence of more clarity or specificity as to the implementation of the right to development and its practical implications, its formulation within the framework of human rights has significantly contributed to draw closer attention to the minimum or basic necessities of life. Probably one of the most relevant features of the right to development as a human right is the idea of those necessities as a basis for *entitlements*[70]. Moreover, the formulation of the right to development,

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(66) A.A. Cançado Trindade, "The 1991 Brasília Seminar on the Protection of Human Rights", 12 *Human Rights Law Journal* [1991] p. 346; A.A. Cançado Trindade (ed.), *A Proteção dos Direitos Humanos nos Planos Nacional e Internacional: Perspectivas Brasileiras*, San José/Brasília, IIDH, 1992, p. 341.

(67) PNUD, *Desarrollo Humano: Informe 1991*, Bogotá, PNUD, 1991, pp. 66 and 79.

(68) R.N. Kiwanuka, "Developing Rights: The U.N. Declaration on the Right to Development", 35 *Netherlands International Law Review* (1988) pp. 265-269 and 272; P. Macalister-Smith, "The Notion of Development as a Right: Reflections from an International Perspective", *in* M.P. Singh, *Comparative Constitutional Law*, Lucknow (India), Eastern Book Co., 1989, pp. 317-319, 323 and 325.

(69) Ian Brownlie, *The Human Right to Development*, London, Commonwealth Secretariat (Occasional Paper Series), 1989, pp. 16-17.

(70) P. Macalister-Smith, *op. cit. supra* n. (68), pp. 325-326 and 317; I. Brownlie, *op. cit. supra* n. (69), pp. 23-24.

revealing its individual and collective dimensions, sometimes regarded as a "synthesis" of a great many human rights, contributes to focus on the totality of means required for a comprehensive and integrated implementation of all human rights standards (thus disclosing the interrelatedness of civil and political, and economic, social and cultural rights), with apparently more emphasis on economic, social and cultural rights (so as to achieve a proper balance between the categorizations of rights)(71). In fact, the right to development has lately had judicial recognition, in the *Guinea/Guinea Bissau Maritime Delimitation* case, as pertinently recalled by Ian Brownlie: in its award of 18 February 1983, the Court of Arbitration which decided the case referred to "the legitimate claims" of the parties as developing States, and to "the right of the peoples involved to a level of economic and social development which fully preserves their dignity"(72).

The issue of the implementation or vindication of the right to development can in fact be properly considered within the universe of international human rights law. By and large, human rights which have found expression in multiple instruments at global and regional levels form the object of groups of provisions that have functions which may appear different but are often complementary to each other, namely: to protect the life and physical integrity of human beings and to secure the exercise of other fundamental rights and freedoms; to prevent and eliminate all forms of discrimination; to secure minimum conditions of living(73).

Human rights range *substantively* from those which impose limits to State intervention (e.g., right to life, right not to be ill-treated, liberty and security of person, freedoms of thought, conscience, religion and opinion, freedom of movement) to those which require State action (e.g., right to work and to an adequate standard of living, including food, housing and clothing; right to health and to social security; right to organize trade unions; right to education)(74). Human rights range *procedurally* from those which can be vindicated by the victims themselves (or their representatives) to those which involve a complex web of actors, namely, the victims themselves, interest groups, judges, legislators and the administration. The normative-judicial model, suitable to the implementation of individual rights, appears inadequate to the implementation of, e.g., rights pertaining to human collectivities, the protection of which may require the mobilization of public funds and resources. The basic shortcoming of the judicial control model is that it treats *all* rights in a rather undifferentiated way, starting

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(71) I. Brownlie, *op. cit. supra* n. (69), pp. 12 and 22; P. Macalister-Smith, *op. cit. supra* n. (68), p. 317.

(72) *Cit. in* I. Brownlie, *op. cit. supra* n. (69), pp. 1-2, and cf. p. 13 n. 1.

(73) A. Kiss, "Définition et nature juridique d'un droit de l'homme à l'environnement", *Environnement et Droits de l'Homme* (ed. P. Kromareck), Paris, UNESCO, 1987, p. 14.

(74) A. Eide, "Maldevelopment and 'the Right to Development': a Critical Note with a Constructive Intent", *Hague Colloquy, op. cit. supra* n. (46), p. 400.

from the assumption that they are all susceptible of being vindicated by the same method[75].

In practice it does not happen so; rights pertaining to human collectivities seem to call for a distinct approach to the means and the institutional arrangements for their implementation or vindication. As it has pertinently been pointed out, sometimes legislative measures may prove sufficient, but other times one may have to make "a concerted effort to cross cultural, socio-economic and other barriers in order to inform potential victims of their rights"[76]. Violations of those rights may affect so many individuals that individual litigation may prove unsuitable or unjustified, and it may happen that national rules of *locus standi* end up by denying standing[77]. In this broader dimension, it is clearer that the "justiciability" of a right cannot be erected as a *conditio sine qua non* of its existence and recognition as such: there are rights which cannot properly be vindicated today before a tribunal by their active subjects ("titulaires")[78]. This point needs further reflection and considerable rethinking of international human rights law, given the emergence of rights pertaining to human collectivities.

In any way, it can also be argued that, having been brought and enshrined into the realm of international human rights law, the right to development, when raised in concrete cases, may well count on the operation of the means of implementation proper to the international protection of human rights (basically, the petitioning, the reporting and the fact-finding systems). To this effect a range of possible courses of action may be contemplated in the future. These might be pursued, first, at the initiative of the human beings concerned, individually and collectively (communities, associations, groups), as active subjects of the right to development. Secondly, the possibility is not to be discarded of the initiative of States acting on behalf of peoples, to protect them: clear indications to this effect can be found in, e.g., two applications instituting proceedings before the International Court of Justice, namely, that of New Zealand (against France) in the *Nuclear Tests* case (1973-1974), and that of Nauru (against Australia) in the pending *Phosphate Lands* case (1989 onwards).

However, having raised this possibility, it seems that it is in particular on the methods of human rights protection proper that the right to development is more likely to count for its implementation *as a human right*. The 1986 Declaration, in this respect, actually refers, in its preamble, to relevant *instruments* of the United Nations and its specialized agencies in the present domain. Anyway, the implementation of the right to development as a human right, given the "individual"

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(75) A. Cassese, A. Clapham and J. Weiler, *1992 - What Are Our Rights?*, Florence, European University Institute, 1989, pp. 25 and 53-54.

(76) *Ibid.*, pp. 55-56.

(77) *Ibid.*, p. 68.

(78) A. Kiss, *op. cit. supra* n. (73), p. 24.

and "collective" dimensions of the right at issue and its comprehensive nature, may prove to be a complex and multi-faceted one.

IV. The Right to Development in Its Relation to Other Human Rights

Moreover, we need be guarded against the pitfalls of an inadequate compartmentalization of human rights, first because it hardly reflects the reality of their actual implementation (the current search for more effective implementation of all human rights), and secondly because it may pave the way to invocation of undue restrictions to the exercise of certain rights. In fact, the proposed classification of individual, social and peoples' rights is to be properly approached on the understanding that one category of rights cannot prescind from the existence of the others. By the same token, the rights of certain categories of protected persons, regarded as belonging to particularly vulnerable groups and standing in need of special protection - such as, e.g., rights of workers, of women, of the child, of the elderly, of disabled persons - are to be properly approached on the understanding that they are complementary to those enshrined in general human rights treaties. Whether one has in mind the protection of certain rights *vis-à-vis* the State (fundamental freedoms) and/or the guarantee of other rights by the State itself, the implementation of instruments turned to rights which may appear distinct as to the *protected persons* or as to the *kind of protection sought* is to be properly taken as *complementary* to that of *general* treaties on human rights protection (e.g., the two U.N. Covenants on Human Rights and the three regional - European, American and African - Conventions)(79).

In the line of the more lucid thinking in international human rights law, it is a merit of the 1986 U.N. Declaration on the Right to Development that it provides guidelines for approaching the relation of the right to development to other human righs. In three of its particularly significant passages (Articles 6(2), 9(1) and preamble), the Declaration stresses that all human rights are indivisible and interdependent and that, in order to promote development, equal and urgent attention should be given to the implementation of civil, political, economic, social and cultural rights, and the observance of certain human rights cannot thus justify the denial of others; likewise, all the aspects of the right to development are

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(79) A.A Cançado Trindade, *A Questão da Implementação Internacional dos Direitos Econômicos, Sociais e Culturais: Evolução e Tendências Atuais*, San José/Costa Rica, Instituto Interamericano de Derechos Humanos (VII Curso Interdisciplinario), 1989, pp. 7-8; A.A. Cançado Trindade, "Co-existence and Co-ordination of Mechanisms of International Protection of Human Rights (At Global and Regional Levels)", 202 *Recueil des Cours de l'Académie de Droit International* (1987) p. 57.

indivisible and interdependent and each of them is to be considered in the context of that right as a whole. The Declaration in this way echoes the endorsement, by the celebrated U.N. General Assembly resolution 32/130 of 1977, of the thesis of the indivisibility and interdependence of all human rights advanced by the 1968 Proclamation of Teheran, the roots of which may be traced back to the 1948 Universal Declaration and its preparatory work undertaken by the U.N. Commission on Human Rights(80).

The globalist perspective pursued by the United Nations was prompted by the fundamental changes undergone by so-called contemporary international society (*inter alia*, decolonization, capacity of massive destruction, population growth, environmental conditions, energy consumption). The globalist conception, externalized by U.N. GA resolutions 32/130 of 1977 and others (res. 39/145, 43/113, 43/114, 43/125) and by the Declaration on the Right to Development, has contributed to focus on the promotion and protection of the rights pertaining to human collectivities and on the priority search of solutions to generalized gross and flagrant violations of human rights.

The 1986 Declaration can only come to *reinforce* other human rights previously formulated. May it be recalled that this globalist approach, which emanated from the United Nations, was soon to have repercussions, and pave the way for distinct solutions, also at regional level. As known, in the African continent, the draftsmen of the 1981 African Charter on Human and Peoples' Rights opted for the inclusion in that single Convention of a catalogue of civil and political (Articles 3-14), economic, social and cultural (Articles 15-18), and peoples' (Articles 19-24) rights, with a mechanism of implementation common to them all (Articles 46-59 and 62). In the European continent, the Council of Europe distinctly opted for the adoption, in 1987, of the First Protocol to the European Social Charter, expanding the list of rights protected under this latter. And in the American continent, the OAS also distinctly opted for the adoption, in 1988, of the Additional Protocol to the American Convention on Human Rights Relating to Economic, Social and Cultural Rights, incorporating certain economic, social and cultural rights to the Inter-American system of human rights protection(81). There could hardly be any pretense of a supposed antagonism of solutions at global (United Nations) and regional levels, the multiple instruments of protection being complementary to each other, given their overriding identity of purpose.

The right to development, as propounded by the 1986 Declaration, comes, on its turn, in the context of development initiatives, to *re-inforce* existing rights and the interdependence and indivisibility of civil, political, economic, social and cultural rights; the globalist approach (*supra*) discloses the complementarity

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(80) *Ibid.*, pp. 8 and 59, respectively.

(81) A.A. Cançado Trindade, *A Questão da Implementação...*, *op. cit. supra* n. (79), pp. 9-10, 12 and 29.

between so-called "individual" and "collective" rights and preserves the indivisibility of rights with predominantly individualist as well as collectivist orientations or inclinations[82]. In the same line of thinking, the requirements of material development could *not* be invoked to justify restrictions to the exercise of guaranteed human rights; this is so given the interaction between human rights and development[83] (cf. U.N. GA resolution 37/199) and the Declaration's warning that all aspects of the right to development are also indivisible and interdependent and to be taken into account in the context of the whole.

The right to development, with its comprehensive nature, is commonly said to have at a time an "individual" and "collective" (social) dimension; to distinguish plainly, however, between so-called "individual" and "collective" rights may amount to reducing the *substratum* of those rights to the means of their exercise[84]. All those rights in a way have a social dimension, in that - whether exercised by individuals or groups - they are related in varying degrees to the community, and solidarity is not the exclusive apanage of any category of rights[85]. An atomized or fragmented view of human rights, not relating them to each other, can easily be misleading: for example, the assertion that the right to a clean environment brings about limitations to the exercise of some economic and social rights (to a greater extent than of "classical" rights) is not remindful of the fact that that right has come to expand and reinforce existing rights[86]. So has the right to development, and this may well bring about some adjustments to render new rights effective.

This is the necessary consequence of the complementary nature of all human rights. Reversely, a denial of the right to development is bound to entail adverse consequences for the exercise of civil and political as well as economic, social and cultural rights. The search, in recent years, for more effective means of implementation of economic, social and cultural rights, conducive to distinct solutions at global (the new machinery of the U.N. Committee on Economic, Social and Cultural Rights) and regional (*supra*) levels, was undertaken surely under the influence of the fundamental unity of conception and the indivisibility of human rights. The formulation of the right to development, likewise, could only have been undertaken in the light of that same conception and indivisibility. The phenomenon we witness in our days is *not that of a succession*, but *rather of the expansion and strengthening* of recognized human rights.

The atomized outlook of human rights (*supra*), with its distortions, are on the other hand rendered possible by the theory of "generations" of rights: human rights,

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(82) Ph. Alston, *op. cit. supra* n. (52), pp. 107-109.

(83) A. Eide, *op. cit. supra* n. (74), pp. 402 and 410.

(84) J.-B. Marie, "Relations between Peoples' Rights and Human Rights: Semantic and Methodological Distinctions", 7 *Human Rights Law Journal* (1986) pp. 197-200.

(85) *Ibid.*, pp. 199-200.

(86) M. Ali Mekouar, "Le Droit à l'environnement dans ses rapports avec les autres droits de l'homme", *in Environnement et Droits...*, *op. cit. supra* n. (73), pp. 91-105.

whichever way they are classified, disclose an essentially complementary nature, interact with each other; they do not "replace" each other, distinctly from what the unfortunate invocation of the image of the passing of generations would seem to indicate. Moreover, the analogy of the "generational succession" of rights, from the point of view of the evolution of international law in this domain, does not appear historically sound: developments on the matter in municipal and international law do *not* seem to have taken place *pari passu*. Thus, while in internal (constitutional) law the recognition of social rights was in general in many countries subsequent to that of civil and political rights, the same did *not* occur at international level, as exemplified by the various and successive international labour conventions (as from the establishment of the ILO in 1919), some of them preceding the adoption of more recent international conventions devoted to civil and political rights. It is important, in this domain, even in our days, to reduce or bridge the gap which seems to persist between the constitutionalist and internationalist outlooks of the matter(87).

Some additional remarks remain here to be made. First, the right to development - like the right to a healthy environment - discloses with clarity the *intertemporal dimension*(88) in the international protection of human rights, perhaps not sufficiently explored up to date. This dimension encompasses both the "dynamic" interpretation of human rights treaties and instruments and their actual application in the *cas d'espèce* (e.g., the gradual crystallization of the notion of "potential" victims)(89). Secondly, and last but not least, the recent progress in the search for a more effective implementation of economic, social, and cultural rights and in the formulation of the right to development bears witness of the considerable advances achieved in recent years, at doctrinal level, by the conception of the indivisibility of human rights. The acknowledgement of those advances, however, cannot make abstraction of endeavours of identification, at the *normative level*, of a nucleus of non-derogable rights of universal acceptance (e.g., rights to life, not to be subjected to torture or slavery, not to be condemned by retroactive application of penalties).

This reassuring consolidation of a hardcore of fundamental non-derogable rights, as a definitive achievement of civilization, has *not* taken place *pari passu* to developments at the *procedural level*, where the absence of a "hierarchy" between the distinct mechanisms of protection seems to continue to prevail. Those mechanisms have in practice reinforced each other, revealing or sharing an

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(87) A.A. Cançado Trindade, *A Questão da Implementação... op. cit. supra* n. (79), pp. 9-10; Ph. Alston, "A Third Generation of Solidarity Rights: Progressive Development or Obfuscation of International Human Rights Law?", 29 *Netherlands International Law Review* (1982) pp. 316-317, and cf. pp. 307-322.

(88) For a comprehensive study, from the perspective of international environmental law, cf. E. Brown Weiss, *In Fairness to Future Generations: International Law, Common Patrimony, and Intergenerational Equity*, Tokyo/Dobbs Ferry N.Y., U.N.U./Transnational Publs., 1989, pp. 1-385.

(89) A.A. Cançado Trindade, "Co-existence and Co-ordination...", *op. cit. supra* n. (79), pp. 243-299.

essentially complementary nature, as evidenced, e.g., by the incidence here of the test of the primacy of the most favourable provision to the alleged victims.

In this framework of diversity of the means of protection, there seems to be no logical or juridical impossibility to keep on advancing, concomitantly, in the search, at the *substantive level*, for an *expanded* universal nucleus of non-derogable rights, and, at the *procedural level*, e.g., for an increasingly more effective implementantion of social rights, in the light of the conception of the indivisibility of human rights. While such an expansion of the hardcore of fundamental rights cannot for the time being be achieved, a current attitude has consisted in focussing attention on the devising and improvement of *guarantees* with regard to all human rights (both non-derogable and derogable).

However, the consideration of the possible expansion of the nucleus of non-derogable rights appears surely as a commendable step for the near future, keeping in mind the distortions and abuses perpetrated by the chronic and pathological prolongation of states of exception - declared and non-declared - and suspension of rights in the recent history of various countries, with the consequent reiterated, systematic and large-scale violations of human rights therein. Moreover, taking the proposed categories of rights as forming an indissoluble whole and considering that the observance of certain social rights and of the right to development has a direct bearing upon the exercise of even certain classical rights of freedom (civil and political), nothing would impede, epistemologically, that in the future some of the former (e.g., right to work, right to education) and the rights to development and to a healthy environment would or could also come to integrate that "expanded" hardcore of non-derogable rights.

The recognition of the right to a healthy environment (as in the African Charter on Human and Peoples' Rights, Article 24, and in the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, Article 11) enriches and reinforces existing human rights and brings to the fore other rights in new dimensions, e.g., the much-needed right of citizen participation, which, in turn, requires the effectiveness of the rights to information and to education (in environmental matters). Reversely, and in the same way, environmental protection can be pursued through the vindication of existing rights (e.g., right to privacy, right to the peaceful enjoyment of one's possessions, - as recent case-law indicates, particularly under the European Convention on Human Rights). This bears witness of the indivisibility of human rights. Once asserted as a *human right*, the right to a healthy environment, rather than entailing restrictions to the exercise of other rights, comes to enrich the *corpus* of recognized human rights.

The same could be said of the recognition of the right to development as a human right (as in the 1986 U.N. Declaration on the Right to Development, G.A. resolution 41/128); the interrelatedness, e.g., between the right to life in its wide dimension (as encompassing also the adequate conditions for a dignified standard

of living) and the right to development as a human right becomes self-evident, as this latter purports to demand all possible endeavours to overcome obstacles (of destitution and underdevelopment) preventing the fulfiment of basic human needs[90].

VIII. Concluding Remarks: the Instrumentalization of the Right to Development as a Human Right (Possible Mechanisms)

Given that human rights protection antedates environmental protection in time, it is to be expected that the experience accumulated in the implementation of the former can be of use and value to the implementation of the latter. Some inspiration can possibly be derived from the experience of application, e.g., of the methods of reporting[91] and fact-finding as developed in the international implementation of human rights for the improvement of the international implementation of instruments on environmental protection and for the future implementation of the right to development at international level.

Since this latter has been brought into the realm of international human rights law by the 1986 U.N. Declaration on the Right to Development, and since the Declaration refers in its preamble to relevant *instruments* of the United Nations and its specialized agencies in the present domain, it is proper to consider the suitability of mechanisms of human rights protection for the instrumentalization of the right to development as a human right. Accordingly, in the debates of the 1990 U.N. Global Consultation on the Right to Development as a Human Right, we raised four possibilities for consideration in this connection, namely: a) in case an alleged denial or violation of the right to development (e.g., growth of unemployment, refusal of access to education, housing and health services, etc.) can be taken to amount to gross or massive and flagrant violation of human and peoples' rights, the possible devising of a means of implementation in the line of a communications system inspired in the model of the ECOSOC resolution 1503 procedure; b) on the basis of the experience accumulated in this area (e.g., under the ILO and the U.N.), the possible adoption of a system of periodic State reports, forwarded to such an

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(90) Not surprisingly, the U.N. Working Group of Governmental Experts on the Right to Development recommended in 1984 *inter alia* that particular attention should be paid to the basic needs and aspirations of vulnerable or disadvantaged and discriminated groups. Cf. P.J.I.M. De Waart, "The Inter-Relationship between the Right to Life and the Right to Development", *The Right to Life in International Law* (ed. B.G. Ramcharan), Dordrecht, Nijhoff/Kluwer, 1985, pp. 89 and 91-92; and cf. A.A. Cançado Trindade, "Legal Dimensions of the Right to Development as a Human Right: Some Conceptual Aspects", 12 *Revista del Instituto Interamericano de Derechos Humanos* (1990) pp. 81-95.

(91) Cf. United Nations, *Manual on Human Rights Reporting*, New York, U.N. Centre for Human Rights/UNITAR, 1991, pp. 3-201.

organ as the U.N. Commission on Human Rights, with questionnaires reflecting a more balanced, integrated approach to civil and political, and economic, social and cultural rights; c) the possible establishment of a system of monitoring, by a group of experts or a special *rapporteur* (appointed by the U.N. Secretary-General or the U.N. Commission on Human Rights), of given situations manifestly resulting from the condition of underdevelopment or with a direct bearing on the realization of the right to development as a human right, in co-ordination with other supervisory organs (particularly those with a concrete mandate under general treaties of human rights protection); d) the undertaking of studies in depth by such an organ as the U.N. Sub-Commission on Prevention of Discrimination and Protection of Minorities aiming at, e.g., identifying specific key issues pertaining to the right to development as a human right (e.g., health, housing, access to education and information, etc.)(92).

We further pondered in the debates of the U.N. Global Consultation that a combination of two or more of the above-suggested methods was not to be excluded, and might indeed prove suitable, given the comprehensive nature of the right to development as a human right, encompassing the protection of the human person and of peoples in the civil, political, economic, social and cultural domains; the above-suggested were thus not exclusive of other and possibly new methods of implementation that could be devised(93). This is a point which certainly deserves further inquiry and thought; the recognition and formulation of the right to development as a human right introduced ethical considerations in the conduction and assessment of contemporary international relations and displayed the ineluctable link between development and human rights. In the humanization of the process of development, it is now high time to turn our attention and reflection to the needed devising of some form of institutionalization of the implementation of the right to development as a human right in the years to come.

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(92) A.A. Cançado Trindade, *Direito das Organizações Internacionais*, Brasília, Escopo Ed., 1990, pp. 327-328 and 343-345; A.A. Cançado Trindade, "As Consultas Mundiais das Nações Unidas sobre a Realização do Direito ao Desenvolvimento como um Direito Humano", 72/74 *Boletim da Sociedade Brasileira de Direito Internacional* (1990-1991) pp. 91-100.

(93) A.A. Cançado Trindade, *Direito das Organizações..., op. cit. supra* n. (92), p. 345.

ANNEX

Declaration on the Right to Development

(Adopted by the U.N. General Assembly resolution 41/128 of 4 December 1986)

The General Assembly,

Bearing in mind the purposes and principles of the Charter of the United Nations relating to the achievement of international co-operation in solving international problems of an economic, social, cultural and humanitarian nature, and in promoting and encouraging respect for human rights and fundamental freedoms for all without distinction as to race, sex, language or religion,

Recognizing that development is a comprehensive economic, social, cultural and political process, which aims at the constant improvement of the well-being of the entire population and of all individuals on the basis of their active, free and meaningful participation in development and in the fair distribution of benefits resulting therefrom,

Considering that under the provisions of the Universal Declaration of Human Rights everyone is entitled to a social and international order in which the rights and freedoms set forth in that Declaration can be fully realized,

Recalling the provisions of the International Covenant on Economic, Social and Cultural Rights and of the International Covenant on Civil and Political Rights,

Recalling further the relevant agreements, conventions, resolutions, recommendations and other instruments of the United Nations and its specialized agencies concerning the integral development of the human being, economic and social progress and development of all peoples, including those instruments concerning decolonization, the prevention of discrimination, respect for and observance of, human rights and fundamental freedoms, the maintenance of international peace and security and the further promotion of friendly relations and co-operation among States in accordance with the Charter,

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,

Recalling also the right of peoples to exercise, subject to the relevant provisions of both International Covenants on Human Rights, full and complete sovereignty over all their natural wealth and resources,

Mindful of the obligation of States under the Charter to promote universal respect for and observance of human rights and fundamental freedoms for all without distinction of any kind such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status,

Considering that the elimination of the massive and flagrant violations of the human rights of the peoples and individuals affected by situations such as those resulting from colonialism, neo-colonialism, *apartheid*, all forms of racism and racial discrimination, foreign domination and occupation, aggression and threats against national sovereignty, national unity and territorial integrity and threats of war would contribute to the establishment of circumstances propitious to the development of a great part of mankind,

Concerned at the existence of serious obstacles to development, as well as to the complete fulfilment of human beings and of peoples, constituted, *inter alia*, by the denial of civil, political, economic, social and cultural rights, and considering that all human rights and fundamental freedoms are indivisible and interdependent and that, in order to promote development, equal attention and urgent consideration should be given to the implementation, promotion and protection of civil, political, economic, social and cultural rights and that, accordingly, the promotion of, respect for and enjoyment of certain human rights and fundamental freedoms cannot justify the denial of other human rights and fundamental freedoms,

Considering that international peace and security are essential elements for the realization of the right to development,

Reaffirming that there is a close relationship between disarmament and development and that progress in the field of disarmament would considerably promote progress in the field of development and that resources released through disarmament measures should be devoted to the economic and social development and well-being of all peoples and, in particular, those of the developing countries,

Recognizing that the human person is the central subject of the development process and that development policy should therefore make the human being the main participant and beneficiary of development,

Recognizing that the creation of conditions favourable to the development of peoples and individuals is the primary responsibility of their States,

Aware that efforts at the international level to promote and protect human rights should be accompanied by efforts to establish a new international economic order,

Confirming that the right to development is an inalienable human right and that equality of opportunity for development is a prerogative both of nations and of individuals who make up nations,

Proclaims the following Declaration on the Right to Development:

Article 1

1. The right to development is an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized.

2. The human right to development also implies the full realization of the right of peoples to self-determination, which includes, subject to the relevant provisions of both International Covenants on Human Rights, the exercise of their inalienable right to full sovereignty over all their natural wealth and resources.

Article 2

1. The human person is the central subject of development and should be the active participant and beneficiary of the right to development.

2. All human beings have a responsibility for development, individually and collectively, taking into account the need for full respect for their human rights and fundamental freedoms as well as their duties to the community, which alone can ensure the free and complete fulfilment of the human being, and they should therefore promote and protect an appropriate political, social and economic order for development.

3. States have the right and the duty to formulate appropriate national development policies that aim at the constant improvement of the well-being of the entire population and of all individuals, on the basis of their active, free and meaningful participation in development and in the fair distribution of the benefits resulting therefrom.

Article 3

1. States have the primary responsibility for the creation of national and international conditions favourable to the realization of the right to development.

2. The realization of the right to development requires full respect for the principles of international law concerning friendly relations and co-operation among States in accordance with the Charter of the United Nations.

3. States have the duty to co-operate with each other in ensuring development and eliminating obstacles to development. States should realize their rights and fulfil their duties in such a manner as to promote a new international economic order based on sovereign equality, interdependence, mutual interest and co-operation among all States, as well as to encourage the observance and realization of human rights.

Article 4

1. States have the duty to take steps, individually and collectively, to formulate international development policies with a view to facilitating the full realization of the right to development.

2. Sustained action is required to promote more rapid development of developing countries. As a complement to the efforts of developing countries,

effective international co-operation is essential in providing these countries with appropriate means and facilities to foster their comprehensive development.

Article 5

States shall take resolute steps to eliminate the massive and flagrant violations of the human rights of peoples and human beings affected by situations such as those resulting from *apartheid*, all forms of racism and racial discrimination, colonialism, foreign domination and occupation, aggression, foreign interference and threats against national sovereignty, national unity and territorial integrity, threats of war and refusal to recognize the fundamental right of peoples to self-determination.

Article 6

1. All States should co-operate with a view to promoting, encouraging and strengthening universal respect for and observance of all human rights and fundamental freedoms for all without any distinction as to race, sex, language or religion.

2. All human rights and fundamental freedoms are indivisible and interdependent; equal attention and urgent consideration should be given to the implementation, promotion and protection of civil, political, economic, social and cultural rights.

3. States should take steps to eliminate obstacles to development resulting from failure to observe civil and political rights, as well as economic, social and cultural rights.

Article 7

All States should promote the establishment, maintenance and strengthening of international peace and security and, to that end, should do their utmost to achieve general and complete disarmament under effective international control, as well as to ensure that the resources released by effective disarmament measures are used for comprehensive development, in particular that of the developing countries.

Article 8

1. States should undertake, at the national level, all necessary measures for the realization of the right to development and shall ensure, *inter alia*, equality of opportunity for all in their access to basic resources, education, health services, food, housing, employment and the fair distribution of income. Effective measures should be undertaken to ensure that women have an active role in the development process. Appropriate economic and social reforms should be carried out with a view to eradicating all social injustices.

2. States should encourage popular participation in all spheres as an important factor in development and in the full realization of all human rights.

Article 9

1. All the aspects to the right to development set forth in the present Declaration are indivisible and interdependent and each of them should be considered in the context of the whole.

2. Nothing in the present Declaration shall be construed as being contrary to the purposes and principles of the United Nations, or as implying that any State, group or person has a right to engage in any activity or to perform any act aimed at the violation of the rights set forth in the Universal Declaration of Human Rights and in the International Covenants on Human Rights.

Article 10

Steps should be taken to ensure the full exercise and progressive enhancement of the right to development, including the formulation, adoption and implementation of policy, legislative and other measures at the national and international levels.

Intergenerational Equity and Rights of Future Generations[1]

EDITH BROWN WEISS

Environmentally sustainable development inherently raises issues of fairness between generations in the care and use of our planet Earth.

The issues are in the first instance normative ones, which must be addressed if we are to develop and implement appropriate instruments for sustainable development. The major environmental economic instruments we use today start from the point of view of the present generation. Externalities, such as those caused by pollution, are based on the present generation's perspective. The discount rate, which is the primary tool by which we consider long-term effects, is ineffective in considering costs and benefits more than a decade or two away. But if we posit that future generations have a normative claim to the natural and cultural environment they inherit, then it will be essential to develop the appropriate mix of economic instruments to ensure effective representation of future generations.

Similarly our policies and institutions are often focused on short-term results, without sustained attention to long-term issues. But if future generations have rights and we have obligations to them in using the planet, then we will need to develop policies and institutions which can address the longer term concerns.[2]

Traditionally international law has focused on relations among members in the present generation or on the relationship of the present generation to past generations. But the new challenge in international law is to relate the present to the future. The 1972 Stockholm Conference on the Human Environment recognized this dimension, as have certain international legal instruments concluded since then.

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(1) This presentation is adapted from E. Brown Weiss, *In Fairness to Future Generations: International Law, Common Patrimony, and Intergenerational Equity* (Transnational, United Nations University, 1989), and E. Brown Weiss, "Our Rights and Obligations to Future Generations for the Environment", 84 *A.J.I.L.* 198 (1990).

(2) For purposes of analysis, the present generation consists of those people who are living at the present time. Certainly the content of the generation changes daily, as some are born and others die. But this does not affect the usefulness of the construct for analyzing the entitlement among generations.

The theory of intergenerational equity put forward here is that we, the human species, hold the natural environment of our planet in common with all members of our species: past generations, the present generation, and future generations.(3) As members of the present generation, we hold the earth in trust for future generations. At the same time, we are beneficiaries entitled to use and benefit from it. All generations are equal in their normative position in relation to the natural system of which they are a part. There is no basis for favoring one generation over another.(4)

There are two relationships that must shape any theory of intergenerational equity in the context of our natural environment: our relationship to other generations of our own species and our relationship to the natural system of which we are a part.(5)

The human species is integrally linked with other parts of the natural system; we both affect and are affected by what happens in the system. The natural system makes life possible for us. It gives us the resources with which to survive and to improve human welfare. But the natural system is also hostile in many ways. Earthquakes, droughts, tsunamis, volcanoes, and glaciers can bring havoc to our species. Moreover, the natural environment can be toxic to our species, as through the natural toxicity of some plants and animals or the dramatic release of toxic clouds of carbon dioxide from Lake Nyos in the Cameroon, which caused 1700 deaths.

Our actions affect the natural system. We alone among all living creatures have the capacity to shape significantly our relationship to the environment. We can use it on a sustainable basis or we can degrade environmental quality and the natural resource base. As part of the natural system, we have no right to destroy its integrity; nor is it in our interest to do so. Rather as the most sentient of living creatures, we have a special responsibility to care for the planet.

The second fundamental relationship is that between different generations of the human species. All generations are inherently linked to other generations, past and future, in using the common patrimony of earth.

Every generation is in a position of equality to other generations in its relationship with the natural system. There is no reason to prefer one generation over another. This notion of equality among generations, and among peoples within

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(3) E. Brown Weiss, *In Fairness to Future Generations*, *supra* note 1. The theory of intergenerational equity and the implications for international law are developed in detail in the book.

(4) This presentation does not attempt to analyze alternative approaches to future generations, ranging from maximizing consumption today to preservation of the natural system. See E. Brown Weiss, *In Fairness to Future Generations, Id.* at 21-23. For an insightful analysis from an economist's perspective of alternative approaches and the implications for economic instruments, see J. Rothenberg. "Economics of Intertemporal and Intergenerational Equity", *Global Commons: Environmental Challenges and International Responses* (N. Choucri ed. in press, 1992).

(5) The field of human ecology studies this relationship. See, e.g. *In Man, the Environment, and Human Ecology* (A.S. Boughey ed. 1973); R. & P. Watson, *Man and Nature* (1969).

generations, is deeply rooted in public international law. The Preamble to the Universal Declaration of Human Rights begins, "Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice, and peace in the world. . .". The reference to all members of the human family has a temporal dimension, which includes all generations. The reference to equal and inalienable rights affirms the basic equality of generations within the human family.

The United Nations Charter, the International Covenant on Civil and Political Rights, the Convention on the Prevention and Punishment of the Crime of Genocide, the American Declaration on the Rights and Duties of Man, the Declaration on the Elimination of Discrimination Against Women, the Declaration on the Rights of the Child, and many other human rights documents affirm the dignity of all people and the equality of their rights. The Declaration of the Principles of International Cultural Co-operation provides in Art. 1 that "each culture has a dignity and value which must be respected and preserved", and that "all cultures form part of the common heritage belonging to mankind".(6) These documents express a fundamental belief in the dignity of all members of the human family and an equality of rights, which extends in time as well as space. Indeed, to license the present generation to exploit our natural resources at the expense of future generations or to starve the present generation to benefit future generations would be contrary to the purposes of the United Nations Charter and international human rights documents.

To define intergenerational equity, it is useful to view the human community as a partnership among all generations. In describing a state as a partnership, Edmund Burke observed that "as the ends of such a partnership cannot be obtained in many generations, it becomes a partnership not only between those who are living but between those who are living, those who are dead, and those who are to be born".(7) The purpose of human society must be to realize and protect the welfare and well-being of every generation. This requires sustaining the life-support systems of the planet, the ecological processes and the environmental conditions necessary for a healthy and decent human environment.

In this partnership, no generation knows beforehand when it will be the living generation, how many members it will have, or even how many generations there will ultimately be. It is useful, then, to take the perspective of a generation that is placed somewhere along the spectrum of time, but does not know in advance

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(6) Declaration of the Principles of International Cultural Cooperation, Resolutions, Gen. Conf. of UNESCO, Nov. 4, 1966 (Sess. 14).

(7) E. Burke, Reflections on the Revolution in France 139-40 (1790), in 2 *Works of Edmund Burke* 368 (London 1854).

where it will be located.[8] Such a generation would want to inherit the earth in at least as good condition as it has been in for any previous generation and to have as good access to it as previous generations. This requires each generation to pass the planet on in no worse condition than received and to provide equitable access to its resources and benefits.[9] Each generation is thus both a trustee for the planet with obligations to care for it and a beneficiary with rights to use it.

The theory of intergenerational equity finds deep roots in international law.[10] Concern for future generations as well as present generations first emerged in the Stockholm Conference on the Human Environment. The Preamble to the Stockholm Declaration expressly refers to the objective of protecting the well-being of future generations: " . . . To defend and improve the environment for present and future generations has become an imperative goal for mankind - a goal to be pursued together with, and in harmony with, the established and fundamental goals of peace and of worldwide economic and social development". The Declaration's first principle provides that "man . . . bears a solemn responsibility to protect and improve the environment for present and future generations", while the second declares that the "natural resources of the earth, including the air, water, and, flora and fauna . . . must be safeguarded for the benefit of present and future generations through careful planning and management".[11] Explicit concern for protecting the natural (or cultural) environment for future generations was incorporated into several international agreements negotiated almost contemporaneously with the Stockholm Declaration and has appeared in subsequent international legal instruments, including in particular, the regional seas conventions.

While it is important to focus on future generations, it is equally important to address the equity concerns among communities within the present generation. In many instances intergenerational and intragenerational actions are consistent. But in some instances, there may be conflicts between immediate satisfaction of wants and long-term needs of sustainability.[12]

Intergenerational equity itself encompasses an intragenerational dimension. When future generations become living generations, they have certain rights and obligations to use and care for the planet that they can enforce against one another. These derive from the position of each generation as a member of the partnership of

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(8) See J. Rawls, *A Theory of Justice* (1971), who applies this to social systems but does not address relationships with the natural system.

(9) The trust includes both natural and cultural systems, so that the passing on of knowledge, technology, and institutions to use the planet more efficiently, to develop resource substitutes, and to conserve its environmental services is included.

(10) E. Brown Weiss, *supra* note 1, at 25-26.

(11) Declaration of the United Nations Conference on the Human Environment, U.N. Doc. A/Conf. 48/141 (1972).

(12) For analysis of problems of intergenerational equity, See E. Brown Weiss, *In Fairness to Future Generations*, *supra* note 1, at 5-15.

generations across time. Were it otherwise, members of one generation could allocate the benefits of the world's resources to some communities and the burdens of caring for it to others and still potentially claim on balance to have satisfied principles of equity among generations.

Moreover, the fulfillment of intergenerational obligations requires attention to intragenerational equity. Poverty is a primary cause of ecological degradation. Poverty-stricken communities, which by definition have unequal access to resources, are forced to over exploit the resources they do have so as to satisfy their own basic needs. As an ecosystem begins to deteriorate, the poor communities suffer most, because they cannot afford to take the measures necessary to control or adapt to the degradation, or to move to more environmentally robust areas. Moreover, they have neither the capacity nor the desire to fulfill intergenerational obligations when they cannot even attain basic human needs from the earth today.

Thus, to implement intergenerational equity, countries need to help poor communities to use the natural environment on a sustainable basis, to assist them in gaining equitable access to the economic benefits from our planet, such as potable water, and to help protect them from degraded environmental quality. As beneficiaries of the planetary legacy, all members of the present generation are entitled to equitable access to and use of the legacy. The future nationals of all countries will benefit from efforts of the present generation to protect the general planetary environment for future generations. Conversely, all will suffer if the present generation does not make such efforts.

Three basic principles of intergenerational equity are proposed.

First, each generation should be required to conserve the diversity of the natural and cultural resource base, so that it does not unduly restrict the options available to future generations in solving their problems and satisfying their own values, and should also be entitled to diversity comparable to that enjoyed by previous generations. This principle is called "conservation of options". Fulfillment of this principle can be accomplished not only by conservation of the resources directly but also by new technological developments that create substitutes for existing resources or that exploit and use resources more efficiently.

Second, each generation should be required to maintain the quality of the planet so that it is passed on in no worse condition than that in which it was received, and should also be entitled to planetary quality comparable to that enjoyed by previous generations. This is the principle of "conservation of quality". In implementing this principle, trade-offs will be inevitable. For example, we may exhaust more reserves of a natural resource and increase pollution in an area, but pass on a higher level of income, capital and knowledge sufficient to enable future generations to develop substitutes for the resource and methods to abate or remove the pollutants. A framework must be developed which uses baseline measurements and predictive indices to evaluate planetary quality.

Third, each generation should provide its members with equitable rights of access to the legacy of past generations and should conserve this access for future generations. This is the principle of "conservation of access". This principle gives the present generation a reasonable, nondiscriminatory right of access to the natural and cultural resources of the planet. Its implementation raises difficult issues which underlie part of the debate about sustainable development.

These principles, options (diversity), quality, and access, allow future generations the flexibility to operate within their own value systems and do not require one generation to predict the values of another. They promote equity among generations by respecting both the rights of future generations not to be deprived by the present generation's preference for its own well-being and the rights of the present generation to use the environment free from ureasonable constraints to protect indeterminate future needs. The principles are reasonably definite and clear in application to foreseeable situations. Finally, they are generally shared by different cultural traditions, and generally acceptable to different political and economic systems.

These principles of intergenerational equity form the basis of a set of intergenerational obligations and rights, or planetary rights and obligations, that are held by each generation. These rights and obligations derive from each generation's position as part of the intertemporal entity of human society. They are complemented by a set of intragenerational rights and obligations among members of the present generation, which derive the intergenerational rights and obligations.

Planetary rights and obligations are integrally linked. The rights are always associated with obligations. They are rights of each generation to receive the planet in no worse condition than did the previous generation, to inherit comparable diversity in the natural and cultural resources bases, and to have equitable access to the use and benefits of the legacy. They represent in the first instance a moral protection of interests, which must be transformed into legal rights and obligations.

Planetary rights and obligations coexist in each generation. In the intergenerational dimension, the generations to which the obligations are owed are future generations, while the generations with which the rights are linked are past generations. Thus the rights of future generations are linked to the obligations of the present generation. In the intragenerational context, planetary obligations and rights exist between members of the present generation. They derive from the intergenerational relationship that each generation shares with those who have come before and those yet to come. Thus, intergenerational obligations to conserve the planet flow from the present generation both to future generations as generations and to members of the present generation, who have the right to use and enjoy the planetary legacy.

Intergenerational rights of necessity inhere in all generations, whether these be immediately successive generations or ones more distant. There is no theoretical

basis for limiting such rights to immediately successive generations. If we were to do so, we would often provide little or no protection to more distant future generations. Nuclear and hazardous waste disposal, the loss of biological diversity and ozone depletion, for example, have significant effects on the natural heritage of more distant generations.

Intergenerational planetary rights may be regarded as group rights, as distinct from individual rights, in the sense that generations hold these rights as groups in relation to other generations past, present and future.(13) They exist regardless of the number and identity of individuals making up each generation. When held by members of the present generation, they acquire attributes of individual rights in the sense that there are identifiable interests of individuals that the rights protect. However, those interests derive from the fact that those living now are members of the present generation and have rights in relation to other generations to use and benefit from planet Earth. The remedies for violations of these rights will benefit other members of the generation, not only the individual.

More broadly, intergenerational rights may provide a theoretically attractive framework for linking a number of disparate rights which have inherently a temporal dimension. These include cultural rights and rights to development, which implicitly assume that there are continuing processes that are to be protected.

It has been argued that future generations cannot have rights, because rights exist only when are identifiable interests, which can only happen if we can identify the individuals who have interests to protect. Since we cannot know who the individuals in the future will be, it is not possible for future generations to have rights.(14)

This paradox assumes the traditional conceptual framework of rights as rights of identifiable individuals. But planetary intergenerational rights are not in the first instance rights possessed by individuals. They are, instead, generational rights, which must be conceived of in the temporal context of generations. Generations hold these rights as groups in relation to other generations - past, present and future. This is consistent with other approaches to rights, including the Islamic approach which treats human rights not only as individual rights, but as "rights of the community of believers as a whole".(15) They can be evaluated by objective criteria and indices applied to the planet from one generation to the next.

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(13) For a thoughtful analysis of group rights in relation to goods that are enjoyed together, see J. Waldron, *Can Communal Goods Be Human Rights*? (paper delivered at Conference on Development, Environment and Peace as New Human Rights, Oxford University, Oxford, England, May 28-31, 1987).

(14) This has been referred to as Parfit's paradox and was developed in D. Parfit, "On Doing the Best for Our Children", in *Ethics and Population* 100 (M. Bayles ed. 1976) and D. Parfit, *Future Generations, Further Problems*, 11 Phil. & Pub. Aff. 113 (1982).

(15) M. Khaduri, *The Islamic Conception of Justice* 233 (1984).

To evaluate whether the interests represented in planetary rights are being adequately protected does not depend upon knowing the number or kinds of individuals that may ultimately exist in any given future generation.

One might still ask whether it is not preferable to speak only of planetary obligations toward future generations without corresponding intergenerational rights. Can intergenerational obligations exist without rights?(16) While rights are always connected to obligations, the reverse is not always true. Theoretically, an obligation need not always entail a right. For example, a moral obligation of charity does not give those who benefit a right to charity. The legal positivist Hans Kelsen hesitated to find a legal right connected to certain legal obligations.

> If obligated behavior of one individual does not refer to a specifically designated other individual . . . but refers only to the legal community as such, then . . . one is satisfied . . . to assume a legal obligation without a corresponding reflex right: for example in the case of the legal norms that prescribe a certain human behavior toward some animals, plants, or inanimate objects by pain of punishment.(17)

John Austin described some obligations as absolute duties, which exist independently of any correlative right. He defined absolute duties as those prescribing actions toward parties other than the one obliged, who are not determinate persons, such as members generally of an independent society and mankind at large.(18)

If we were to follow this analysis, we would contend that the obligations of the present generation to future generations constitute obligations or duties for which there are no correlative rights, because there are no determinate persons to whom the right attaches. Similarly, in the intragenerational context, obligations to conserve diversity, quality and access would be viewed as absolute duties for which there are no correlative rights.

While this approach may be attractive, it ignores the fundamental temporal relationship that each generation has to all other generations and that gives rise to the rights of each generation to share equitably in the use the planet and its natural resources. These rights focus discussion on the welfare of generations, what each generation is able to have and to enjoy, in a way that obligations cannot. If obligations of the present generation are not linked with rights, the present

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(16) It has been argued that if one accepts the model of rights as limited to individual rights, it is preferable to recognize general obligations toward the integrity of environmental systems rather than to discuss environmental protection in the framework of rights, since this framework cannot encompass such categories as future generations, whose individual members are still contingent. B. Norton, "*Environmental Ethics and the Rights of Future Generations*", 7 *Soc. Theory & Prac.* 319, 337 (1981).

(17) H. Kelsen, *Pure Theory of Law* 62 (M. Knight trans. 1969).

(18) J. Austin, 1 *Austin's Jurisprudence, Lectures on Jurisprudence* 413-15 (1973).

generation has a strong incentive to bias the definition of these obligations in favor of itself at the expense of future generations. Intergenerational rights have greater moral force than do obligations. They provide a basis for protecting the interests of all generations in a healthy and robust planet.

The content of intergenerational rights is framed by the principles of intergenerational equity. Within this constraint, each generation has the responsibility to set criteria for defining the actions that infringe upon these rights. Appropriate criteria would be whether activities have a significant impact, either spatially or over time, whether the effects are irreversible or reversible only with unacceptable costs, and whether the effects will be viewed as significant by a substantial number of people.

Certain categories of actions can be identified as likely infringing upon these. They include the following:

- wastes whose impacts cannot be acceptably contained either spatially or over time, with confidence
- damage to soils so severe that it makes them incapable of supporting plant or animal life
- tropical forest destruction sufficient to diminish significantly the overall diversity of species in the region and the sustainability of soils
- air pollution or land transformations which induce significant climate change on a large scale
- destruction of knowledge essential to understanding natural and social systems, such as residence decay times of nuclear wastes
- destruction of cultural monuments which countries have acknowledged to be part of the common heritage of mankind
- destruction of specific endowments established by the present generation for the benefit of future generations, such as libraries and gene banks.

Some international agreements already obligate countries to guard against such actions. These include the London Ocean Dumping Convention, which controls dumping of hazardous and nuclear wastes in the marine environment, the Antarctica Treaty and the new Environmental Protocol, the World Soils Charter, the Montreal Protocol on Substances That Deplete the Ozone Layer, and the World Heritage Convention.

Intergenerational planetary rights may also be linked to certain procedural norms, which are important to achieving the substantive norms. For example, generation of and access to information, public participation, and long-term impact assessments from the perspective of future generations are emerging as potentially important instruments for achieving intergenerational equity.

Enforcement of intergenerational planetary rights is appropriately done by a guardian or representative of future generations as a group, not as future

individuals, who are of necessity indeterminate. While the holder of the right may lack the capacity to bring grievances forward and hence depends upon the representative's decision to do so, this inability does not affect the existence of the right or the obligation associated with it.

Developments in international law outside the field of the environment make acceptance of intergenerational rights a natural and desirable evolution. Indeed, international human rights law - the Genocide Convention, and the prohibition against racial discrimination, to cite two examples - are arguably directed as much to the protection of future, as to present, generations. The extinction of, for example, an entire people is more odious in law than the murder of an equal number of people constituting a minority of each of several groups. Similarly, discrimination denies an "equal place at the starting gate" not only to the generation of the suppressed group, but (by implication) also to future generations. Provisions in other human rights agreements refer to rights of children and of the elderly, and to education and training, which are implicity temporally oriented.

The existence of intergenerational planetary rights also has significant implications for policy. For example, it may be argued that population policies are linked to fulfillment of intergenerational rights. If the earth's population continues to grow rapidly, the amount of diversity and degree of quality that must be passed on will be higher than if the population in the future were at the same level or less than it is today.

Certainly the existence of intergenerational planetary rights may affect the population policies of present and future generations. But whether a generation chooses to meet its obligations by curtailing exploitation, consumption and waste or by constraining population growth is a decision each generation must make. The fact that future generations have a generational right to receive the planet in a certain condition puts constraints on the extent to which a present generation can ignore this choice.

It has also been argued that if we intervene to conserve the environment to protect future generations, we cannot succeed in protecting them because our intervention will cause a different group of individuals to emerge.(19)

Certainly the composition of future generations cannot be known in advance, in part because it is affected by actions of the present generation. Virtually every policy decision of government and business affects the composition of future generations, whether or not they are taken to ensure their rights under the guidelines enunciated above. Decisions regarding war and peace, economic policy, the relative prosperity of different regions and social groups, transportation, health, education - all influence the demographics and the composition of future generations by affecting the lives and fortunes of the present generation: who will succeed and

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(19) A. D'Amato, "Do We Owe a Duty to Future Generations to Preserve the Global Environment", 84 *A.J.I.L.* 190, 192-4 (1990).

prosper, who will marry whom, who will have children, and even who will emigrate.

The theory of intergenerational equity presented here takes the view that planetary obligations to future generations are owed to all the earth's future human inhabitants, whomever they may be. This opens the possibility that these decisions, too, deserve to be scrutinized from the point of view of their impact on future generations. It offers a useful and broadly acceptable theoretical underpinning to sustainable resource development. The possibility that intergenerational equity may place limits on our actions is an important new area of human rights research.

Such limitations should be applied very narrowly, lest the rights of future generations be an instrument for thwarting change. But surely long-term environmental damage is a good place to begin. Future generations do have the right to be assured that we will not pollute ground water, load lake bottoms with toxic wastes, extinguish biologically important habitats or change the world's climate dramatically - all long-term effects that are difficult or impossible to reverse - unless there are extremely compelling reasons to do so, reasons that go beyond profitability.

Finally, it is essential to develop effective techniques for ensuring representation of future generations in the market place. Once the underlying normative allocation between generations in relation to the natural system is clear, then the appropriate economic instruments should be able to be developed which take account of the entitlement.

Planetary rights of future generations provide a normative framework for implementing environmentally sustainable development. They mean that we do not have to rely on a sense of noblesse oblige by the present generation(20), but rather that we are implementing a fundamental entitlement of future generations. It is an entitlement which we ourselves, as members of the present generation, held in relation to our ancestors and which we need now to protect for our descendants.

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(20) See J. Rothenberg, *supra* note 4.

Environmental Protection and the Right to Food

DINAH SHELTON

U. S. President Calvin Coolidge is said to have explained once that the cause of unemployment is people out of work. Similarly, there is general agreement that the cause of hunger is people out of food.(1) Unfortunately, in most discussions of world hunger and the right to food, agreement ends at this point. The Coolidge formula obviously fails to address the issue of why people lack work or food. The answer sometimes given for sectors of unemployment - that there are those who choose not to work - is clearly inapplicable to food shortages; the malnourished and hungry do not volunteer for their condition. They are, instead, victims of multiple dislocations and conditions, mostly human caused, which deprive them of necessary sustenance. The Brandt Commission in 1980 stated that it saw "no more important task before the world community than the elimination of hunger and malnutrition in all countries" recognizing that "this in not a limited task - it involves nearly all aspects of the world economy and the development process, to create and distribute both the required food and the employment and incomes which will enable the food to be bought by those who need it".(2)

The following discussion looks at the problem of global hunger, then analyses the right to food as it is expressed in international human rights instruments. Finally, it addresses the inextricable link between environmental protection and implementation of the right to food.

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(1) Among the literature discussing the right to food, see P. Alston, K. Tomasevski, eds. *The Right to Food* (1984); A. Eide, W. B. Eide et al, *Food as a Human Right* (1984); I. Brownlie, *The Human Right to Food* (Commonwealth Secretariat, Human Rights Unit Occasional Paper), 1987; United Nations, *Right to Adequate Food as a Human Right*, 1989;

(2) Brandt Commission, 1980, p.3.

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I. The Scope of World Hunger

The number of hungry and malnourished people is not known, nor are there accurate statistics on how many die of starvation each year. Recently, based on UNICEF statistics, it was estimated that more than one billion persons are chronically hungry, with 13 to 18 million people dying each year as a result of hunger and starvation.(3) This figure corresponds to 24 deaths every minute. Children are the most severely disadvantaged, with hunger causing perhaps 60 percent of all infant deaths(4) and children under five years of age comprising more than three-fourths of all hunger-related deaths. Although other figures vary considerably due to definitional problems and statistical deficiencies, it seems safe to say that, globally, there are millions of deaths each year that can be attributed directly to lack of adequate food.

In addition to the numbers who die of starvation, millions more suffer from chronic malnutrition. In 1984, FAO estimated that 500 million persons were suffering from severe malnutrition.(5) Nutritional deficiencies affect learning ability and capacity to work, as well as the behavior and well-being of large segments of the population.(6) Thus, a whole range of problems are linked to the right to food, and violation of this right impacts upon other human rights, including the rights to life, to health, to education, and to work.

Although there are the many conflicts about the scope of the hunger problem and its causes, there are certain areas of agreement: one, that *for now* there is sufficient food being produced globally that if it were adequately distributed, there would be enough to satisfy the needs of the world.(7) However, it is estimated that 50 percent more food will have to be grown by the end of this century to meet nutritional needs.(8) At the same time, the rate of increase of food production is declining(9) and each increase in production becomes more costly.(10) Growing demand threatens to generate further crises. In ecological terms, it is clear that world popu-

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(3) United Nations, *Right to Adequate Food as a Human Right, supra* n. 1 at 2.

(4) Id. p. 4.

(5) *Hunger Primer*, National Committee for World Food Day (Washington, D. C., 1984).

(6) Ber, *Malnourished People: A Policy View* (World Bank, 1981), p. 1.

(7) U. N., *Report of the Food and Agriculture Organization (FAO) to the Human Rights Commission*, E/CN.4/1986/38/Add.2, para. 8.

(8) Forward, World Soil Charter, 1982.

(9) It was expected that cereal production in 1991 would fall below consumption demands in 1991/1992. FAO, The State of Food and Agriculture 1991, C91/2, p. 2.

(10) In recent years, it has taken 50% more energy to produce 30% more food. R. Lal, D. J. Eckert, N. R. Fausey, and W. M. Edwards, "Conservation Tillage in Sustainable Agriculture", in C. Edwards, R. Lal, P. Madden, R. H. Miller and G. House, *Sustainable Agricultural Systems*, (Ankeny, Iowa, 1990) pp. 203-204.

lation levels are growing faster than the food supply and that there are limits to the ability of the environment to produce more food. In fact, as discussed below, many efforts to increase productivity are destructive of the environment and result in further reducing arable land available for food production.

The second point is that malnutrition is largely a reflection of poverty. In addition to problems of famine created by exceeding the carrying capacity of the environment, the increasing food demand escalates prices beyond the reach of the poor. According to the FAO, 55-60% of Africa's rural population lives in absolute poverty.(11) The gross disparities in income and wealth existing both between and within nations are basic to the world food problem. Thus, even higher food output and reduced population growth, necessary elements in any long-term program to eradicate hunger, do not guarantee elimination of the problem. More equitable distribution of wealth and income are equally necessary.(12)

The problems are complex and interdependent. In many countries, much of the most fertile soil has been given over to the production of cash crops for export with a resulting decrease in grain production. Crippled by enormous debts and debt-servicing, many countries rely on the agro-export sector to bring in foreign exchange earnings.

Apart from ecological conditions and the economic system, basic causes of hunger can be found in history (colonialism, slavery, wars, etc.), ideology and culture, and in the political and legal structure of various countries. With these multiple factors producing shortages, it appears that unless there are fundamental changes, the problem of hunger will only increase. Among the urgent changes required are measures necesssary to protect the environment on which all food production is dependent. In this regard, it can be argued that the obligation to take action to protect the environment, at least as directly related to food production, is encompassed within state duties corresponding to the internationally recognized right to food. At very least, the right to food cannot be implemented without actions to protect the environment and without use of techniques first developed by environmental law.

II. The Right to Food in International Instruments

The right to food forms part of contemporary international law, being included in nearly all global human rights instruments and, on the regional level, in the ESC Protocol to the American Convention on Human Rights. However, the first elements of a right to food appeared in rules of humanitarian law.

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(11) FAO, *The State of Food and Agriculture 1991, supra* n. 7, p.46.

(12) See Philip Alston, "International Law and the Human Right to Food", in *The Right to Food* (P. Alston, K. Tomasevski, eds.), 1984, pp. 10-11.

The Hague Regulations of 1907 concerning land warfare, in article 7, guaranteed provision of food to prisoners of war on the same basis as troops of the capturing force. This limited protection was extended in the Geneva Conventions of August 12, 1949 and the 1977 Protocols.[13] Article 26 of Convention III (prisoners of war) provides that:

> The basic daily food rations shall be sufficient in quantity, quality and variety to keep prisoners of war in good health and to prevent loss of weight or the development of nutritional deficiencies. Account shall also be taken of the habitual diet of the prisoners. The Detaining Power shall supply prisoners of war who work with such additional rations as are necessary for the labor on which they are employed. . . Collective disciplinary measures affecting food are prohibited.

Similarly, Convention IV relating to civilians requires that an occupying power, to the fullest extent of the means available to it, ensure the food and medical supplies of the population. This obligation includes bringing in necessary foodstuffs if the resources of the occupied territory are inadequate.

Article 14 of the Second Protocol is most explicit in prohibiting starvation of civilians as a method of combat. There can be no attack on foodstuffs, agricultural areas for the production of foodstuffs, crops, livestock, drinking water installations and supplies and irrigation works. On the other side, there is an obligation to permit relief measures where necessary to alleviate undue hardship.

More generally, human rights texts adopted since the Second World War have included the right to food among listed human rights. The Universal Declaration of Human Rights of December 10, 1948, provides in article 25, paragraph 1 that:

> Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food. . .[14]

This formulation goes beyond freedom from hunger to an entitlement to the amount of food adequate for health and well-being.

The U.N. Covenant on Economic, Social and Cultural Rights[15] is the most important international agreement containing a right to food, detailing the principle

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(13) Protocols Additional to the Geneva Conventions of 12 August 1949 and Relating to the Protection of Victims of International Armed Conflicts, 1125 U.N.T.S. 3 (P.I); 1125 U.N.T.S. 609 (P.II); 16 I.L.M. 1391.

(14) G. A. Res. 217A (111), U.N. Doc A/810, December 10, 1948. During the drafting of the Universal Declaration, other more specific proposals were made concerning the right to food. One draft would have provided that "everyone without distinction as to economic and social conditions, has the right to the preservation of his health through the highest standard of food . . . which the resources of the State or community can provide". UN doc. E/600 (1947) Annex A, article 25.

(15) UN Covenant on Economic, Social and Cultural Rights, G.A. Res. 2200 (XXI)(Annex); 6 *I.L.M.* 360 (1967).

set forth in the Universal Declaration. The Convention has been ratified or acceded to by 104 states as of the beginning of 1992. Its article 11, inspired by the FAO[16], provides:

> 1. The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international cooperation based on free consent.
>
> 2. The States Parties to the present Covenant, recognizing the fundamental right of everyone to be free from hunger, shall take, individually and through international cooperation, the measures, including specific programs, which are needed:
>
> (a) To improve methods of production, conservation and distribution of food by making full use of technical and scientific knowledge, by disseminating knowledge of the principles of nutrition and by developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilization of natural resources.
>
> (b) Taking into account the problems of both food-importing and food-exporting countries, to ensure an equitable distribution of world food supplies in relation to need.

Article 11 encompasses two separate norms as part of the right to food. The first, in paragraph 1, provides that everyone is entitled to the right to food as part of the right to an adequate standard of living. The second paragraph establishes the right of everyone to be free from hunger. The first, broader standard implies that there should be enough food to permit an active, normal existence, not simply avoid death by starvation. Interestingly, the right to freedom from hunger is the only right in both human rights Covenants to be specifically designated as "fundamental".

To implement the right, each state is required, according to the terms of Covenant article 2, to take all appropriate steps, to the maximum of its available resources, to ensure progressive realization of the right of everyone, without discrimination, to adequate food. States parties to the Covenant also are required to take steps through international assistance and cooperation, especially economic and technical, to the maximum of their available resources to achieve realization of this right. In carrying out the duty of international cooperation set forth in article 11(1), certain steps are specified in article 11(2): improve methods of food production with a view to promoting realization of the right to food; improve methods of food conservation with a view to promoting realization of the right to food; and improve methods of food distribution with a view to promoting realization of the right to

(16) For the drafting history of article 11, *see* P. Alston, *supra* n. 1 at 30.

food. For each of these, the article provides that states should make full use of technical and scientific knowledge; disseminate knowledge of the principles of nutrition; and develop or reform their agrarian system. Environmental considerations are incorporated in the requirement that states parties take measures to achieve "the most efficient development and utilization of natural resources".

Implementation thus involves state obligations to respect, protect, and ensure fulfillment of the right to food. Respect and protection involve a duty of due care, while the duty to ensure requires more. Within the obligation to respect is found the duty to include the right to food in human rights law and realization of the right to food in development objectives, as well as enacting legislation aimed at realizing the right to food, e.g. equal access to food production resources through agrarian reform, etc. It also means abstaining from any deprivation of food. Protection includes investigating and punishing any acts resulting in deprivation of food.

The obligation to ensure includes incorporating specific targets according to resource availability to raise nutritional levels (quantified objectives); eradication of hunger; and providing adequate food for all. Ensuring also means adopting national food legislation and strategy to secure progressive implementation of the right to food, and to monitor compliance with existing laws, sanctioning violations when they occur. In other words, states should respect the necessary freedom and the resource base controlled by peoples or individuals; they should protect the freedom and the resource base against others; and the state should when necessary assist to fulfil the right to food when individuals by themselves, cannot take care of their own needs.(17) Finally, it should be recalled that article 23 of the Covenant calls for "international action for the achievement of the rights recognized" in it. There is thus an element of transnational obligations towards the populations of countries whose right to adequate food many be favorably or adversely affected by the policies of a state or towards states which lack the necessary resources to alleviate hunger.

Most recently, the United Nations Convention on the Rights of the Child(18) included in its article 24 a recognition of the right of the child to enjoyment of the highest attainable standard of health. In this regard, the States Parties agree to take appropriate measures,

> c) To combat disease and malnutrition; including within the framework of primary health care, through, *inter alia*, the application of readily available technology and through the provision of adequate nutritious foods and clean drinking-water, taking into consideration the dangers and risks of environmental pollution.

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(17) For further details of the obligations to respect, protect and fulfil, *see* A. Eide and P. Alston, "Advancing the Right to Food in International Law" in Eide, *supra* n. 1, at 249-259.

(18) Convention on the Rights of the Child, adopted by the General Assembly on 5 December 1989, A/RES/44/25.

Among regional human rights instruments, only the Inter-American Protocol to the American Convention on Human Rights contains a right to food. Its article 12 provides:

> 1. Everyone has the right to adequate nutrition which guarantees the possibility of enjoying the highest level of physical, emotional and intellectual development.
>
> 2. In order to promote the exercise of this right and eradicate malnutrition, the States Parties undertake to improve methods of production, supply and distribution of food, and to this end, agree to promote greater international cooperation in support of relevant national policies.

The African Charter on Human and Peoples' Rights omits the right to food, proclaiming generally only "the right to enjoy the best attainable state of mental and physical health".

Apart from conventional norms, the right to food has been reaffirmed in international declarations, resolutions, and programs of action, such as the Universal Declaration on the Eradication of Hunger and Malnutrition adopted in 1974 by the U.N. World Food Conference.(19) The Declaration recognizes a grave food crisis and the inalienable right to be free from hunger and malnutrition. It stresses the need for structural changes to remove obstacles to food production and states that it is a fundamental responsibility of governments to cooperate for increased food production and equitable distribution of food. In a more limited context, the U.N. Standard Minimum Rules for the Treatment of Prisoners guarantees prisoners convicted of crimes "food of nutritional value adequate for health and strength, of wholesome quality and well prepared and served".

Discussions of the right to development also have touched upon food rights, as in the 1981 report of the U.N. Secretary General which mentioned the need for agrarian reforms aimed at social justice.(20) The Declaration on the Right to Development adopted by the U. N. General Assembly in 1986 also calls upon states to take measures to ensure equality of opportunity for all in their access to food.(21)

In addition to statements in human rights instruments, international organizations seeking to alleviate hunger have been created, most importantly the Food and Agriculture Organization established in 1945.(22) The Charter of the FAO pro-

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(19) Universal Declaration on the Eradication of Hunger and Malnutrition, adopted 16 November 1974 by the World Food Conference, endorsed by the General Assembly in Res. 3348 (XXIX) of 17 December 1974.

(20) Cited in R. Plant, "The Right to Food and Agrarian Systems: Law and Practice in Latin America", in P. Alston and K. Tomasevski, *supra* n. 1, at 191.

(21) United Nations Declaration on the Right to Development, article 8(1), G.A. Res. 41/128 of December 4, 1986.

(22) For a discussion of the work of FAO in regard to the right to food, *see* J. Traylor, "FAO and the Right to Food", in Eide, *supra* n. 1, at 187-212.

vides that its mission is to promote investment in agriculture, better soil and water management, improve yields of crops and livestock, incite the transfer of technology to, and the development of agricultural research in, developing countries. In 1965 the FAO Constitution was amended to add to its purposes that of ensuring humanity's freedom from hunger. During its early years, the main focus of the FAO was on restoring productivity and making food supplies available to countries devastated by World War II. Later, technical assistance to developing countries became a major focus. In 1981 the FAO developed and proclaimed the World Soil Charter, discussed further below.(23)

Still, it seems that the right to food has been treated by the United Nations largely as aspirational or programmatic, a goal to be achieved through economic growth, possibly because achieving effective implementation of the right to food is extremely complex, raising issues of commodities agreements, terms of trade, land reform, and equitable domestic and international distribution of available resources. Few issues are as politically threatening to governments as hunger. In addition, despite reiteration of the indivisibility and interdependence of all human rights by the United Nations, there remain challenges to the idea that economic rights form part of human rights.(24)

Perhaps because of these factors, relatively few states have incorporated the right to food into domestic constitutional provisions or legislation, probably deeming policies favoring a right to work and the right to social security as adequate to deal with hunger and malnutrition. However, apart from its role in creating social expectations and perceptions, legislation can be necessary to provide for action during periods of acute food shortage. According to the FAO, such actions may include declaring a food emergency, requisitioning food stocks; requisitioning packaging material; mobilizing transport and storage facilities; facilitating handling and storage; and introducing and administering statutory rationing.(25)

III. Environmental Protection and the Right to Food

Since the Green Revolution of the 1950s and 1960s, there has been increasing awareness that all regions of the globe are faced with problems of environmental degradation of the agricultural resource base. New technologies risk new forms of pollution and existing industries most heavily reliant on environmental resources and most environmentally harmful are rapidly growing in the developing

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(23) FAO Doc. C81/27, October 1981, reprinted *in 8 Envtl Pol. & Law* 63 (1982).

(24) *See* the discussions of this problem in United Nations, *Right to Adequate Food as a Human Right*, supra n. 1 at 10-16; and G.J.H. van Hoof, "The Legal Nature of Economic, Social and Cultural Rights: A Rebuttal of Some Traditional Views", *in* P. Alston and K. Tomasevski, *supra* n. 1, at 97-110.

(25) Spitz, "Livelihood and the food squeeze", CERES, May-June 1981, at 30.

world.[26] Deforestation by highland farmers causes flooding on lowland farms, within and across borders; pesticides and other hazardous chemicals enter the food chain and are internationally traded; marine pollution destroys fishing resources; and good land is turned to desert through overuse of fragile soil.

The ability of land to produce food is limited by soil and climatic conditions and by management techniques. Efforts to push production beyond natural limits only results in decreased productivity. Inappropriate measures for intensifying production on existing agricultural lands can lead to erosion, salinity, alkalinity, waterlogging, depletion of plant nutrients, deterioration of soil structure, desertification and pollution. Such degradation is often irreversible. Without corrective measures, 20 percent of the productive capacity of land in developing countries may be lost by the end of this century.[27] Moreover, measures to bring more land into cultivation can risk long term consequences to the climate through reduction of forests and grasslands. In spite of calls in the World Soil Charter for bringing into cultivation new lands, it is not clear that there is much additional land appropriate for cultivation. What little is left to cultivate is largely contained in rain forests which must be preserved to maintain the global ecological balance.

During 1990 and 1991, the situation was particularly grim. The global economy exacerbated chronic problems of heavy debt and low world prices for agricultural commodities.[28] Overall agricultural production showed a slight increase of 1.5%, but this represented a slowdown over growth rate for the prior year and the 1985-90 average.[29] For some areas, the picture was even more alarming. In Africa per capita real income in 1991 was below levels of the early 1970s and all but nine of 45 sub-Saharan countries had declining food production for the year. Seventeen countries are facing serious food shortages. In Latin America and the Caribbean food and agricultural production in the region fell well below population growth in both 1989 and 1990. A majority of Asian countries also failed to increase their food production in 1990.

The debt load of most tropical countries has made them increasingly dependent on imported food to meet the basic needs of rising populations. Development and technology transfer emphases have been inappropriate to the cultural needs and resource base of many receiving countries. Crop yields are dependent on costly imported inputs, generating a massive shift to cash crops to generate the income to purchase the inputs. The result is less land used for growing basic food crops, especially the best agricultural land. Food imports have risen dramatically, hunger in the rural areas has increased, and the movement of farmers to urban centers has grown,

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(26) *Our Common Future*, Report of the World Commission on Environment and Development, 1985, pp. 4-5.

(27) Forward, World Soil Charter, FAO, 1982.

(28) FAO, *The State of Food and Agriculture 1991*, C91/2. August, 1991.

(29) *Id.*

as have those who move onto less productive marginal land or areas of uncut tropical forest due to the shift to export crops.

The policies and practices of developed countries with respect to resource use also represent long-term threats to the sustainability of developing countries' agricultural systems. These practices include subsidizing agricultural production, treating it like a utility and regarding a high level of national self-sufficiency as attainable and desirable. This destroys potential export markets and encourages developing country dependence on surplus food-grain exports.

The growing crisis has provoked response. The 1987 report of the World Commission on Environment and Development emphasized the central necessity of agricultural sustainability. As it noted, increasing agricultural, forestry and fishery output at the cost of degraded soil, deforestation and depleted fish stocks, threatens increased deprivation of the right to food in the future.

In 1988, the FAO Council adopted a definition of sustainability in relation to food and agriculture:

> Sustainable development is the management and conservation of the natural resource base, and the orientation of technological and institutional change in such a manner as to ensure the attainment and continued satisfaction of human needs for present and future generations. Such sustainable development (in the agriculture, forestry and fisheries sectors) conserves land, water, plant and animal genetic resources, is environmentally non-degrading, technically appropriate, economically viable and socially acceptable.(30)

Sustainability is a key element in FAO's 1982 World Soil Charter. Noting that land, comprising soil, water and associated plants and animals, is among the major resources available for man, the Charter states that use of these resources should not cause their degradation or destruction because human existence depends on their continued productivity. The Charter calls for promoting optimum land use, maintaining and improving soil productivity and conserving all soil resources. It particulary states that decisions about the use and management of land and its resources should favor long-term advantage rather than short-term expedience that may lead to exploitation, degradation and possible destruction of soil resources. Action guidelines include developing land use policies and incorporating their principles into appropriate resource legislation; developing an institutional framework for monitoring and supervising soil management and soil conservation; assessing lands for appropriate uses; implementing educational and research programs and disseminating information about soil erosion, management and conservation; and striving to create socio-economic and institutional conditions favorable to rational land resource management and conservation.

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(30) FAO, *The State of Food and Agriculture, 1989*, p. 65.

What are the major problems currently threatening sustainable food production?

First, on a global level there is growing consensus that human activities are causing climatic change. Global warming threatens to disrupt agriculture in many parts of the world. Impact of the greenhouse effect is expected to be the greatest in semi-arid regions of Africa where the hotter days would aggravate famine and drought; humid, tropical parts of Asia where high sea levels would increase risk of flooding; and high latitudes of Alaska, Canada, and Scandinavia where more extensive ice thaws would cause serious problems.

Second, there is the loss of genetic resources.(31) During human history, it is estimated that over 100,000 edible plant species have been used. This genetic diversity adds to the stability of production and restricts human vulnerability to plant disease epidemics. Today, population growth and the rising demand for food has reduced genetic diversity to where barely 150 plant species and 15 types of livestock are in widespread use. Most of the world population depends upon only 12 plant species for the major part of its food intake. Genetic engineering can improve strains, but the risks of scientific uncertainty are great. It may be a matter of concern that large agrochemical companies are among the leaders in plant biotechnology.

Third, as further discussed below, there is widespread use of agricultural systems and technologies that are not sustainable. These include the heavy use of mineral fertilizers, intensification of livestock production and the use of pesticides.

On a regional level, world fish stocks exploited within national fishing zones are under increasing pressure. Potential demand by the year 2000 approaches the upper limits of the potential for increased production. Acid rain also affects both managed and natural ecosystems, primarily in North America and Europe.

Within countries, on national and local levels, uncontrolled forest clearance, soil erosion and other forms of resource degradation affect agricultural production. Coupled with increased population pressures and pollution from industrial activities, there are problems posed for the longterm survivability of nations. There are some countries whose projected population for the year 2000 exceeds their productive capacities, even assuming full use of arable land and maximum use of currently available technology.

Whether looking at the food problem from a global, regional or national level, the three most widespread environmental challenges are (1) pesticide resistent pests; (2) soil, groundwater, surface water, and food contamination by

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(31) FAO has established a global system for the conservation and utilization of plant genetic resources, composed of a Commission, and international undertaking and an international fund. The International Undertaking on Plant Genetic Resources, adopted in 1983 at the Twenty-second session of the FAO Conference in Res. 8/83, has been accepted by 104 countries.

mineral fertilizers, livestock wastes and pesticides; and (3) erosion, compaction and other forms of soil degradation.

1. Pests and Pesticides: The first book which created general public awareness of environmental problems was Rachel Carson's *The Silent Spring*. It concerned the use of the pesticide DDT. Since that time, crop intensification has led to increased pest problems and further use of pesticides, leading to disruption of ecosystems due to the death of non-target species, accumulation of pesticide residues in the environment and in food, and the buildup of pesticide resistance in target species. Since the 1940s, over 1600 species have developed significant resistance to major pesticides because of their long-term and non-selective use. In addition, the non-selectivity of the pesticides leads to eradication of natural enemies of the pests being fought. It is necessary now to seek understanding of the population dynamics of host-pest-predator.

Pesticides also directly affect the health of agricultural workers and food consumers through acute and chronic work-related exposure and chronic low-level exposure through consumption of residues in food. Acute poisoning of farm workers is the primary danger including problems of neurotoxicity, dermatological lesions, immune system incompetence and carcinogenicity. There is an urgent need to continue surveillance and assessment of pesticides.(32) In general, use of biocides must be targeted to meet criteria of low mammalian toxicity, limited persistence, and low environmental mobility.

2. Fertilizers and waste products: The high crop yields during the Green Revolution were the result in large part of high-energy inputs in the form of inorganic fertilizers, as well as pesticides and herbicides. The widespread rise in groundwater nitrate concentrations is related to the use of mineral fertilizers and is a particular problem in developed countries. With agriculture the principal user of water throughout the world, crop nutrients can accumulate in streams and underground aquifers. Moreover, many tropical soils are inappropriate for heavy fertilizer use due to rapid leaching of nitrogen. Yet, in spite of long term problems, fertilizer consumption in the developing countries continues to increase. There is an alternative: vegetables in rotation or as cover crops can supply some or all of the nitrogen required for crops. In addition, some nutrients leaving in the harvested crop or animal product can be recycled through processing wastes.

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(32) In 1985 FAO adopted an International Code of Conduct on the Distribution and Use of Pesticides, Conference Resolution 10/85. The Code was amended in 1989 to include a requirement of prior informed consent to export to another country of any pesticides that are banned or severely restricted. Other parts of the Code of Conduct regulate pesticide management, testing, reducing health hazards, regulatory and technical requirements, availability and use, distribution and trade, information exchange, labelling, packaging, storage and disposal, advertising, and monitoring.

3. Loss of soil: 97% of the world's food is produced on land[33] and the problem of erosion is a global one. In the United States, the federal Department of Agriculture has found that 6.5 billion tons of soil per year are lost on nonfederal lands to wind and water erosion.[34] Others estimate that one-third of the topsoil of U.S. agricultural land has been lost over the past 200 years.[35] Soil degradation results from three main causes: chemical, including the accumulation of excess salts; physical, notably wind and water erosion; and biological, including deforestation and rangeland destruction through overgrazing. Although a clear assessment is difficult because of sparseness and non-comparability of available data, it appears that in some areas wind erosion has affected more than one-third of all land. The problem is exacerbated by intensive farming to meet population pressures. In a study of one country, maize yields showed declines over the past 25 years.[36] During this period, land pressure increased and fallow periods became impossible in many areas due to cropping every year. Soil organic matter declined and surface erosion became widespread. Soil nutrients are now removed by crops faster than they can be replaced. Without remedial action, farmers in such situations are caught in a downward spiral leading to poverty and deprivation.

Mismanagement is estimated to be responsible for over 80 percent of recent worldwide desertification. Human causes include increased human and livestock populations, overgrazing, bushfires, expansion of agricultural crops, and deforestation due to demands for firewood. Today some one-quarter of the Earth's land surface is desert or damaged by factors that lead to desertification. A further cause for alarm is the fact that the rate of desertification appears to be accelerating in some areas.

At the opposite extreme are areas with too much water, land that is waterlogged or excessively saline. The problem is often caused by water mismanagement and drainage problems. Some of the water problems, particularly flooding, are related to deforestation for the expansion of agriculture and the collection of fuelwood. Trade in wood products, sometimes blamed for deforestation, in fact accounts for only 6% of the use of wood globally.

All of these issues are closely linked to rural poverty, including the lack of access by poor households to productive resources sufficient to meet their basic needs. Population growth is leading to diminishing farm sizes and increasing fragmentation of holdings. New croplands are often marginal and some 300 million people survive each year by slash burn agriculture. The problem essentially and fundamentally remains one of increasing food production other than by expanding

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(33) R. Lal, D.J. Eckert, et al., "Conservation Tillage in Sustainable Agriculture", *supra* n. 10.

(34) *Id.*

(35) *Id.*

(36) FAO, Maize Yields: Malawi, *The State of Food and Agriculture 1989*, pp. 72-73.

the land under cultivation. Population increase demands the former, environmental concerns demand the latter.

The problem is often one of now vs. then. The rural poor overexploit natural resources as a matter of survival, concerned with today's security rather than the future. Even so, food security is beyond the reach of many, creating a cycle of declining productivity. Changing current practices is difficult because long-term benefits of sustainable agricultural practices will not necessarily be reflected in the short term economic calculations of farmers. New practices and programs, both national and international, will have to provide the possibility of short term economic success.

IV. Some Suggestions

All parts of a farming system are interrelated, including the farmer and family.(37) It is important to achieve and maintain a biological balance in the agricultural system by maximizing desired biological relationships and minimizing the use of material and practices that disrupt the system. From the perspective of the plant, the key to sustainable agriculture is nutrient cycling. In an agricultural system, one large loss from the cycle is the harvested crop. The loss is minimized if crops are fed to animals and only animal products leave the farm, but this is not practical for most farms. Management practices can minimize other losses and inputs can offset the remaining ones.

The agenda is easier to state than to achieve: increase the utility of agriculture by maintaining adequate production while providing and adequate livelihood for producers; provide food of acceptable quality and diversity; increase productivity and maintain crop diversity while maintaining a favorable environment; conserve groundwater and protect it from contamination; reduce or eliminate use of pesticides and synthetic fertilizers; maintain wildlife stocks; assure indefinite evolution by minimizing soil loss from erosion and conversion to nonagricultural use; maintain genetic diversity; and develop beneficial patterns of geographical distribution and scale. Clearly some of these goals are in conflict and a balance will have to be reached through a holistic approach.

The major problem is to simultaneously increase rural incomes, alleviate hunger and conserve natural resources. This requires creating an economic and social environment that will encourage the adoption of new environmentally sound technologies and systems.

There are traditional, successful agricultural production systems which rely on crop rotation and biological diversity. Rotation of insecticides and herbicides,

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(37) For an excellent and detailed discussion of current problems and possible solutions, *see Sustainable Agricultural Systems*, edited by C. Edwards, R. Lal, P. Madden, R.H. Miller and G. House. Soil and Water Conservation Society, Ankeny, Iowa, 1990.

even in continuous single crop cultures, also reduces the probability of pest resistance to chemicals. Studies of traditional agriculture are beginning to show the great value such systems have for contributing to the development of ecologically sound management practices that are understandable and acceptable to local populations.(38) The problem again is that many farmers are forced into crop specialization because of short-term economic necessity. They are locked into payment programs that make them dependent on cash grains, as they are caught between long-term soil fertility and short-term economic viability.(39)

One important change can be further development of environmental accounting to treat natural resources such as water, land and forests like other forms of capital with an economic value reflected in price. This requires monitoring natural capital based on full inventories to be used for accounting purposes. While quantifying the value of a river or forest is difficult, failure to include them distorts the real costs of agriculture. Aside from the polluter pays principle, which reflects these costs to some extent, the World Bank concept of "marginal opportunity cost of resource depletion" may be considered. It incorporates the direct and indirect costs of resource degradation, as well as the benefits foregone by those who otherwise would have been able to use the resource in the future.

At the level of the individual farm, environmentally sound accounting could make use of "whole farm analysis". This approach looks at a farming method that may appear to be very profitable or otherwise advantageous per acre, per cow, or at the individual enterprise level, and tests it from the perspective of the whole farm or the household. Whole farm analysis considers the compatibility of proposed alternatives with various practices already in place, the farm's physical and biological resources and anticipated changes in crop yields, livestock enterprise productivity and production costs, the impact on labor and machinery requirements, and the size of the farming operation. Analysis at the whole farm level is essential in determining the economic suitability and sustainability of alternative farming practices but

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(38) Studies have been done of polycultures of maize, beans and squash, practiced in Central America since prehispanic times and still an important part of the patterns of food production there. (Pinchinat, A.M., J. Soria, and R. Bazan, "Multiple cropping in tropical America", 1976, pp. 51-64, *in* R. I. Papendick, P. A. Sanchez, and G.B. Triplett, eds., *Multiple Cropping*. Special Publication 27, American Society of Agronomy. Madison, Wisconsin). A series of studies in Tabasco, Mexico showed that maize yields increased 50 percent above monoculture yields when planted with beans and squash. Amador, M. F., 1980, Comportamiento de tres especies (Maiz, Frijol, Calabaza) en policultivos en la Chontalpa, Tabasco, Mexico. Tesis Profesional. Colegio Superior de Agricultura Tropical, Cardenas, Tabasco, Mexico. Although there was some yield reduction for the associated crop species, the total yields for the three were higher than for an equivalent amount of land planted to monoculture. Apparently squash helps control weeds through its broad, thick, horizontal leaves. Insects also are at a disadvantage in the intercrop system.

(39) *See* C. A. Francis and M. S. Cless, "Crop Rotations in Sustainable Production Systems" *in* Edwards, Lal et al, *supra* n. 10, at 107.

will clearly need a multidisciplinary team and the development of models before it can be widely implemented.

As for the right to food, it is perhaps the most "environmental" of the human rights. After all, agriculture is first and foremost a biological process. Implementation of the right to food demands the same techniques as does environmental protection: monitoring, impact assessment, public participation, etc. The links between human rights and the environment are perhaps most clearly seen in this area: without adequate food, the environment will deteriorate, because hungry people will have no alternative but to convert ecologically unique or necessary habitats into arable land. Thus, conservation of forests and wetlands, for example, depends upon solving the problem of increasing productivity of existing agricultural lands, while also reducing demand for food through slowing population growth. In turn, increased productivity necessary to satisfy the right to food demands environmentally sound measures to ensure sustainability of food supplies. In sum, food production is an environmental issue and, conversely, environmental protection is essential for guaranteeing the human right to food.

Water, Human Rights and Sustainable Development (*)

STEPHEN C. McCAFFREY

Introduction

Much attention has been given to the right to health as a human right and, as a means of implementing that entitlement, the right to food.(1) It cannot be said that the idea of such rights is entirely fanciful, or that it has only recently been conceived. The Universal Declaration of Human Rights,(2) adopted by the United Nations General Assembly in 1948, provides in Article 25 that "Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food. . . ."(3)

Yet surprisingly little attention has been given to the question whether, and to what extent, there is a right to water.(4) Such a right could be envisaged as part and parcel of the right to food, the right to health or, most fundamentally, the right to life. A separate but related issue is whether and to what extent one country has a right to receive water in an international watercourse, from a co-riparian state, that is of sufficient quality and quantity to meet the minimum needs of its population,

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(1) See generally the essays in *The Right to Health as a Human Right*, Workshop, The Hague, 27-29 July 1978, *Hague Academy of International Law*, United Nations University, *Recueil des Cours 1978* (Sijthoff & Noordhoff 1979) (hereafter *The Right to Health*). With particular reference to the right to food, see, e.g., J. P. Dobbert, "Right to Food", in *The Right to Health, ibid.*, p. 184; and P. Alston & K. Tomasevski, *The Right to Food* (Martinus Nijhoff 1984).

(2) U.N.G.A. Res. 217 (III) (1948), adopted Dec. 10, 1948.

(3) *Ibid.*, art. 25, para. 1. Similar provisions in other human rights instruments are discussed in part II, below.

(4) *Cf.*, however, P. -M. Dupuy,"Le Droit à la Santé et la Protection de l'Environnement," in *The Right to Health, supra* note 1, p. 340, especially section II.A.1, "Protection sanitaire des eaux douces," at p. 358, in which Professor Dupuy reviews what he characterizes as the three "generations" of conventions concerning protection of fresh water quality.

assuming such water would be otherwise available. While the former right is probably as yet imperfectly defined and established, the mere suggestion that the latter right may exist could be quite controversial. A third question is whether there is a right to the sustainable development of water resources, or at least the sustainability of those resources in a manner that meets basic human needs. There is both a domestic and an international dimension to this question, as well.

After surveying human patterns of water use, this paper will briefly examine whether a right to potable water may be inferred from other human rights, and will then explore preliminarily the issue of the right to receive water from a co-riparian country.

I. The Increasing Human Consumption of Fresh Water(5)

Humans have historically viewed nature from an anthropocentric standpoint. In keeping with this attitude, which retains its vigor in most parts of the world today, water has been regarded as a "resource", a means of producing wealth,(6) whose principal purpose is to serve and be exploited by humanity. It is only very recently that the idea of "sustainable development"(7) has come to the fore, and even the meaning of that concept is not universally agreed upon.(8)

Today humanity faces two overriding realities relating to fresh water: the use of water has increased dramatically during the past century and will continue to do so;(9) and while the amount of water on earth remains finite and constant,(10) the

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(5) This section of the paper is adapted in part from McCaffrey, "The Evolution of the Law on Transboundary Rivers," paper presented at the Conference on Transboundary Waters in the Middle East: Prospects for Regional Cooperation, Bilkent University, Ankara, Turkey, 2-3 September 1991.

(6) *Randon House College Dictionary* (Rev. ed. 1975).

(7) See generally World Commission for Environment and Development (Brundtland Commission), *Our Common Future*, p. 43, et seq. (1987) (hereinafter WCED Report). "Sustainable development" has been defined as "development that meets the needs of the present without compromising the ability of future generations to meet their own needs." *Ibid.*

(8) See, e.g., the conclusions of the Beijing Symposium on International Environmental Law and Developing Countries, 12-14 August, 1991, which suggest that the emphasis should be placed on "development" rather than sustainability. The report of the Brundtland Commission, on the other hand, states that "the goals of economic and social development must be defined in terms of sustainability in all countries -- developed or developing, market-oriented or centrally planned." WCED Report, *supra* note 7, at p. 43.

(9) Global water consumption has increased from approximately 1,000 cubic kilometers in 1950 to roughly 3,500 cubic kilometers in 1980, and the rate of growth in consumption is itself increasing. La Rivière, "Threats to the World's Water," *Scientific American*, vol. 261, No. 3 Sept. 1989, p. 80, at p. 84 (graph). See also Linden, "The Last Drops,", *Time*, Aug. 20, 1990, p. 58. For a discussion of the historical development of different uses of international rivers, *see* United Nations, Department of Economic and Social Affairs, *Integrated River Basin Development*,

number of human beings using and relying upon it continues to multiply at an alarming rate.(11) With regard to the first point, Professor H. A. Smith in his classic work *The Economic Uses of International Rivers* observed as early as 1931 that "[o]ne of the most noteworthy features of the last hundred years has been the immense increase in the use of water."(12) Professor Smith attributed this increase to a combination of changes in personal habits(13) and scientific progress, factors which continually interact: "The demand for water stimulates invention, and the facility of obtaining it is for ever increasing the demand."(14) In light of this observation, it is perhaps not surprising that the most technologically sophisticated societies consume the most water on a per capita basis. The average person living in the United States, for example, consumes over 70 times as much water annually as the average resident of Ghana.(15)

Perhaps the most important factor contributing to the growing demand for fresh water today is the Earth's burgeoning population, which is increasingly concentrated in urban areas.(16) Again, Professor Smith's words, written in the early part of this century, have even greater force today. Referring to the vastly increased consumption of water per capita in the world's growing cities, he noted that: "This immense consumption now compels nearly all great cities to draw their water supply from distant sources by complicated methods, and this development has had its own international consequences".(17) Smith went on to observe that development pressures may tempt political units "to divert water which in its natural course

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Report of a Panel of Experts, p. 2. U.N. Doc. E/3066/Rev. 1 (1970) (hereinafter Integrated River Basin Development).

(10) "[T]he total supply [of water] neither grows nor diminishes. It is believed to be almost precisely the same now as it was 3 billion years ago." L. Leopold and K. Davis, *Water*, p. 33 (1966).

(11) "Between 1950 and 1985, world population grew at an annual rate of 1.9 per cent, compared with 0.8 per cent in the half-century preceding 1950. Population growth is now concentrated in the developing regions of Asia, Africa, and Latin America, which accounted for 85 per cent of the increase of global population since 1950." WCED Report, *supra* note 7, at p. 99 (footnote omitted). The world population nearly doubled between 1950 (2.5 billion) and 1985 (4.8 billion). *Ibid.*, p. 100, Table 4.1.

(12) H. A. Smith, *The Economic Uses of International Rivers*, p. 1 (1931).

(13) "In the Middle Ages it was still possible for theologians to discuss how often a man might take a bath without being guilty of sin, and St. Benedict rather grudgingly concedes once a year (*vix in anno semel*) as a rule for the monks of his order." *Ibid.* (footnote omitted).

(14) *Ibid.*

(15) La Rivière, *supra* note 9, at p. 80.

(16) *See generally* WCED Report, *supra* note 7, Chapter 9, "The Urban Challenge," pp. 235-258. The per cent of world population living in urban areas was 29.2 in 1950 and had skyrocketed to 41.0 by 1985. To cite one dramatic example, the population of Mexico City, which was 3.05 million in 1950, had increased to 16.0 million by 1982 and was projected by the United Nations to reach 26.3 million by the year 2000. *Ibid.*, at pp. 236-237.

(17) Smith, *supra* note 12, at p. 2.

would flow into other states, and these latter regard such diversion as a violation of their rights".[18]

These changes in the nature of human society and the ways in which it uses water have, ironically, resulted both in increased consumption of fresh water, and -- because the world's population continues to expand exponentially while the quantity of water remains constant -- a steady and continuing reduction of the amount of fresh water on Earth per individual human being.[19] These phenomena will lead inevitably to intensified competition for increasingly scarce water resources both *within* individual countries and *between* different countries. The former situation -- competition within countries -- raises the question, to what extent does a state have an obligation to provide its citizens with a supply of fresh water that is quantitatively and qualitatively sufficient for their health and sanitation needs. The latter situation -- competition between countries -- raises the question whether human rights law has any role to play in the resolution of inter-state water problems. These problems are especially acute in arid regions where there is barely enough water for all, even if allocated in the most equitable and efficient way possible. (It is perhaps appropriate to note parenthetically here that in the field of environmental law we often tend to become preoccupied with questions of pollution and water *quality*. In many regions of the world the principal problem is one of insufficient water *quantity*. This problem deserves more attention.) The two questions outlined above are dealt with in the following sections.

II. The Right to Water as a Human Right

Water is essential to human, as well other forms of life. It is consumed directly and used for such basic needs as sanitation, cleansing and growing food. In fact, some three-quarters of the water consumed by humans is used in agriculture. Thus, water shortages or contamination can lead to famine, disease and even death. Tragically, these problems affect children disproportionately. The United Nations estimates that 40,000 children die each day. Many of these deaths are attributable to water-related problems. In a number of countries -- including Burma (Myanmar), Indonesia, Haiti and Kenya -- less than half the population has access to safe drinking water.[20] The situation is summed up by the United Nations Department of Technical Cooperation for Development as follows:

> No resource is more basic than water. Water is essential for life, crucial for relieving poverty, hunger and disease and critical for economic

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(18) *Ibid.*

(19) See generally Linden, "The Last Drops", *Time*, August 20, 1990, p. 58, reviewing situations in various countries, including Mexico, China, the former Soviet Union and the western United States, involving alarming shortages of water.

(20) *Ibid.*, p. 59 (graphic).

development. Despite enormous improvements over the past 15 years, hundreds of millions of men, women and children still do not have proper water for drinking and sanitation. Many remain unemployed because water resources cannot support agricultural or industrial growth. Water problems ultimately end up as 'people' problems.

As world population increases and development efforts expand, water needs can only increase. By the end of the century, global water use is expected to reach twice the level of 1980.(21)

But water shortages may result from factors other than natural phenomena and poor management. According to recent reports, for example, the Sudanese government is currently forcing some 400,000 squatters in Khartoum to relocate to camps with inadequate water supplies and other services. The United States government has characterized the relocation program as a virtual "death sentence" for many of those being resettled, most of whom are Christians and animists from the southern part of the country. The head of the U.S. Office of Foreign Disaster Assistance has accused the Sudanese government of offering relief to these persons on the condition that they convert to Islam, the state religion. The largest relocation camp holds more than 80,000 individuals yet was served by only one functioning well when a reporter visited the site.(22)

A somewhat more subtle form of forced relocation, this time involving water deprivations, is alleged to be occurring in Israel and the Occupied Territories. In a case brought before the International Water Tribunal, for example, the complainants charge that at least half of some 70 Arab communities in the center and north of Israel are not recognized by the state and are not connected to national

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(21) United Nations Department of Technical Co-operation for Development, *Water Resources*, p. 1 (UNDTCD brochure, undated). See also Principle No. 1 of the Guiding Principles adopted at the International Conference on Water and the Environment (ICWE), Dublin, Ireland, 26-31 January 1992: "Fresh water is a finite and vulnerable resource, essential to sustain life, development and the environment." The potential for conflict between development efforts and the needs of the local population is well illustrated by a "case" brought before the International Water Tribunal (IWT), a non-governmental organization having its seat at Amsterdam, The Netherlands. The IWT receives complaints concerning water use and establishes multidisciplinary "juries" of independent experts to pass on them and make recommendations for their resolution. The case involved a complaint by citizens' groups and a local municipality against Southern Peru Copper Corporation (SPCC), a U.S. company operating in Peru. The Tribunal's jury found, *inter alia*, that SPCC's use of water for copper production "seriously decreased the water resources previously available for the use of the local population for agricultural, grazing and household needs. This reverses the order of priority of water uses established by national laws and the Declaration of Amsterdam and has resulted in the displacement of people and in desertification of the area." International Water Tribunal, case of Associación Civil "Labor", et al., v. Southern Peru Copper Corporation, USA, February 18, 1992, Amsterdam.

(22) The information in this paragraph is drawn from Miller, "Sudan Is Undeterred in Drive to Expel Squatters", *New York Times*, March 9, 1992, p. 3, col. 1.

drinking water networks. This situation is said to have led to serious health problems as well as environmental distress. The plaintiffs charge that Israel is using "water as a means to pressure certain Arab communities to evacuate their places of residence and relocate against their will."[23] In the West Bank, it has been reported that Israel is controlling supplies of groundwater -- the only significant water source -- by permitting its settlers to drill many deep wells while restricting the number and depth of Arab wells. This practice has caused Arab wells to dry up, forcing some Arabs to relocate.[24]

The cases reviewed above illustrate how water can be used as a political weapon. Depriving individuals of fresh water can force them to relocate or, worse, can result in disease and death. Given the potential for its use by governments for improper purposes and, more fundamentally, its importance to human life and civilization, it is surprising that water is not mentioned at all in either of the 1966 Covenants[25] or in the Universal Declaration of Human Rights.[26] If there is a

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(23) International Water Tribunal, case of the Galilee Society for Health Research and Services, et al., v. Government of Israel, complaint ("Case Document"), October, 1991. Concerning the International Water Tribunal, see note 21, *supra*.

(24) This situation is discussed in McCaffrey, "Water and International Politics," in P. Gleick, ed., *Global Water Resources: The Coming Crisis*, chapt. 8 (Oxford University Press, forthcoming 1992). See also National Public Radio, All Things Considered, series on water in the Middle East, December 3, 1981 (transcript).

(25) International Covenant on Economic, Social and Cultural Rights, opened for signature Dec. 19, 1966; entered into force Jan. 3, 1976. U.N.G.A. Res. 2200 (XXI), 21 U.N. GAOR, Supp. (No. 16) 49, U.N. Doc. A/6316 (1967), *reprinted in* 6 *I.L.M.* 360 (1967) (hereafter referred to as the E.S.C. Covenant). International Covenant on Civil and Political Rights, opened for signature Dec. 19, 1966; entered into force March 23, 1976. U.N.G.A. Res. 2200 (XXI), 21 U.N. GAOR, Supp. (No. 16) 52, U.N. Doc A/6316 (1967), *reprinted in* 6 *I.L.M.* 368 (1967) (hereafter referred to as the C.P. Covenant).

(26) Water is, however, expressly mentioned in the newest human rights agreement of a universal character, the Convention on the Rights of the Child, adopted by the U.N. General Assembly, November 28, 1989, entered into force September 2, 1990. 28 I.L.M. 1448 (1989). Article 24(2)(c) of the Convention provides:

> 2. States Parties shall pursue full implementation of this right [i.e., the right of the child to the enjoyment of the highest attainable standard of health] and, in particular, shall take appropriate measures:
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> . . .
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> c) to combat disease and malnutrition, including within the framework of primary health care, through, *inter alia*, the application of readily available technology and through the provision of adequate nutritious foods and clean drinking-water, taking into consideration the dangers and risks of environmental pollution; . . . .

Ibid. The Convention reflects a specific recognition of the particular importance of clean drinking water at the close of the twentieth century by the U.N. Commission on Human Rights, which prepared the original draft, the Economic and Social Council, and the U.N. General Assembly.

right to water under the basic instruments of international human rights law, therefore, it must be inferred from those instruments. As noted at the outset of this paper, article 25 of the Declaration proclaims that "Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food . . . ."[27] There would seem to be little doubt that such a standard of living could not exist without an adequate supply of water suitable for drinking. Further, unless food were imported from other states, the "right" to an adequate standard of living contained in article 25 presumes an adequate supply of water to sustain agriculture to the extent necessary to feed the state's population.

As a General Assembly resolution, the Declaration is not binding per se; but at least its most fundamental provisions are generally thought either to have passed into customary international law, or to constitute an authoritative interpretation of relevant U.N. Charter provisions, or both.[28] However, while these provisions would include many so-called "liberty rights" -- i.e., "rights not to be treated in certain ways, or not to be interfered with"[29] - it is by no means clear that they would include what have been referred to as "welfare rights" -- i.e., "rights to be assured the provision of certain goods or services considered necessary for human well-being."[30] Article 25 of the Declaration would fall into the latter category,[31] thus casting doubt upon its status as a binding obligation. Even if it did constitute such an obligation, a right to water would still have to be inferred from that provision. That is, it would have to be established that a right to water is implicit in the right to an adequate standard of living to which the article explicitly refers. Even then, it is likely that states would not be required to guarantee such a right immediately, but would only have to implement it progressively, and to the extent

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(27) See note 2, *supra*, and accompanying text.

(28) See, e.g., Henkin, "Human Rights," in *Encyclopedia of Public International Law*, Instalment 8, at 268 (R. Bernhardt ed. 1985); Humphrey, "The Universal Declaration of Human Rights: Its History, Impact and Juridical Character," in B. Ramcharan, ed., *Human Rights: Thirty Years After the Universal Declaration*, p. 21, at pp. 28-37 (1979); Sohn, "The New International Law: Protection of the Rights of Individuals Rather than States", 32 *Am. U. L. Rev.* p. 1, especially at pp. 16-17; and Th. Buergenthal, *International Human Rights in a Nutshell*, pp. 29-33 (St. Paul: West Publishing Co. 1988). See also American Law Institute, *Restatement (Third) of the Foreign Relations Law of the United States* § 702 (St. Paul: American Law Institute Publishers 1987), providing a non-exhaustive list of "those human rights whose status as customary law is generally accepted. . . . " *Ibid.*, Comment *a*.

(29) Okin, "Liberty and Welfare: Some Issues in Human Rights Theory," in *Human Rights, Nomos* XXIII, *Yearbook of the American Society for Political and Legal Philosophy*, Chapt. 12, p. 230, at p. 237 (New York and London: New York University Press 1981). According to Okin, liberty rights would generally include those contained in articles 3 to 20 of the Universal Declaration (possible exceptions being article 15(1) and article 8).

(30) *Ibid.* Okin states that these rights would consist of those contained in articles 22-27 of the Universal Declaration, with the possible exception of article 23(4).

(31) See the preceding footnote.

permitted by their resources. This would seem to follow from the fact that the right would be derived from the article of the Declaration whose counterpart is article 11 of the Economic, Social and Cultural Covenant (E.S.C. Covenant). While the Covenant on Civil and Political Rights (C.P. Covenant) "imposes an immediate obligation 'to respect and to ensure' the rights it proclaims,"(32) states parties to the E.S.C. Covenant need only implement the obligations under that agreement progressively.(33) Let us then turn to the C.P. Covenant to see whether it would support a right to water.

Article 6, paragraph 1, of the C.P. Covenant provides: "Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life."(34) Can this right be interpreted to embrace a right to water sufficient to sustain life? An affirmative answer to this question would place a significant obligation on states since, as noted above, the C.P. Covenant "imposes an immediate obligation 'to respect and to ensure' the rights it proclaims and to take whatever other measures are necessary to bring about that result.(35)

Unfortunately, respected commentators have taken on the view that "[t]he human right to life per se . . . is a civil right, and it 'does not guarantee any person against death from famine or cold or lack of medical attention.'"(36) Rather, the right to life, according to this view, is a guarantee against the arbitrary deprivation of life by the state. Thus, "the mere toleration of malnutrition by a state will not be regarded as a violation of the human right to life, whereas purposeful denial of access to food, e.g., to a prisoner, is a different matter."(37) Thus, there is a line of thought according to which Article 6 does not require the state to take affirmative actions to ensure that its citizens have access to, e.g., adequate sustenance, but only obliges it to refrain from practicing or tolerating arbitrary deprivations of life. It would therefore be difficult to infer a right to water under this interpretation of Article 6.

The recent trend, however, seems to be toward a more expansive interpretation of Article 6. Most notably, the Human Rights Committee, established by the C.P. Covenant,(38) has declared that the right to life, as the most fundamental human right, may not be understood in a restrictive sense and, further, that its

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(32) Buergenthal, *supra* note 28, at 37.

(33) E.S.C. Covenant, *supra* note 25, art. 2, para. 1.

(34) C.P. Covenant, *supra* note 25, art. 6, para. 1.

(35) T. Buergenthal, *supra* note 28, at 37.

(36) Dinstein, "The Right to Life, Physical Integrity, and Liberty," in L. Henkin, ed., *The International Bill of Rights*, Chapt. 5, p. 114, at p. 115 (New York: Columbia University Press 1981), quoting from N. Robinson, *The Universal Declaration of Human Rights*, p. 106 (1958).

(37) *Ibid.* at p. 116.

(38) See C.P. Covenant, *supra* note 25, art. 28.

protection requires that states adopt *positive* measures.[39] According to this view, a restrictive interpretation of the right to life is out of place in today's world. Rather, "under the right to life, in its modern and proper sense, not only is protection against any arbitrary deprivation of life upheld, but furthermore States are under the duty 'to pursue policies which are designed to ensure access to the means of survival' for all individuals and all peoples."[40] Thus, this modern view would interpret the right to life broadly, so that it "comprises the right of every human being not to be deprived of his life (*right to life)* and the right of every human being to have the appropriate means of subsistence and a decent standard of life (preservation of life, *right of living*)."[41] Construed as including the right to appropriate means of subsistence, the right to life would clearly encompass the right to sanitary drinking water.

But even those adhering to a wider view of Article 6 seem to believe that it is not that the right to life *encompasses* the other rights (e.g., right to subsistence) but rather that the "safeguarding of this foremost right is an essential condition for the enjoyment of the entire range of civil and political, as well as economic, social and cultural rights."[42] While this interpretation undoubtedly strengthens the right to life, it does not bring the right to sustenance into the C.P. Covenant. This is unfortunate, in view of the softer nature of the obligations under the Covenant on Economic, Social and Cultural Rights.

Article 11 of that Covenant[43] provides in part that the Parties "recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement

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(39) J. G. Van Aggelen, *Le rôle des organisations internationales dans la protection du droit à la vie*, p. 23 (Brussels, Story-Scientia 1986), cited in A. A. Cançado Trindade, "The Parallel Evolutions of International Human Rights Protection and of Environmental Protection and the Absence of Restrictions on the Exercise of Recognized Human Rights," 13 *Revista IIDH* 35, at 51 (1991). Dinstein himself recognizes that some members of the Human Rights Committee (established by the C.P. Covenant) have taken the position that Article 6 of the C.P. Covenant "requires the state to take positive measures to ensure the right to life, including steps to . . . protect the environment." Dinstein, *supra* note 36, at p. 116, citing U.N. Doc. CCPR/C/SR.222 para. 59 (1980).

(40) Cançado Trindade, *ibid.*, at p. 54, quoting B. G. Ramcharan, "The Right to Life," *Netherlands International Law Review* p. 301, at p. 302 (1983).

(41) *Ibid.*, at pp. 51-52 (emphasis in original).

(42) *Ibid.*, at p. 53, citing B. G. Ramcharan, *supra* note 40, at p. 301 (emphasis deleted). See also Cançado Trindade, *supra* note 34, at p. 52, quoting Przetacznik approvingly to the effect that "'the former [i.e., the right not to be deprived arbitrarily of life] belongs to the area of civil and political rights, the latter [i.e., the right to have the appropriate means of subsistence and a decent standard of life] to that of economic, social and cultural rights.'" *Ibid.*, quoting F. Przetacznik, "The Right to Life as a Basic Human Right," 9 *Revue des droits de l'homme/Human Rights Journal* p. 589, at p. 603 (1976).

(43) *Supra* note 25.

of living conditions."[44] It will be taken as self-evident for the purposes of this analysis that the right to an adequate standard of living defined in article 11 includes a supply of water that is at least adequate to meet basic human needs.[45]

While the right proclaimed in article 11 is, potentially, quite far-reaching, a state party to the E.S.C. Covenant undertakes only "to take steps . . . to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the [E.S.C.] Covenant. . . "[46] Thus, in contrast to the C.P. Covenant, there is no obligation on parties to the E.S.C. Covenant to implement its provisions immediately. This is only logical, in view of the vast disparity of resources and capabilities among existing and potential parties to this Covenant. The "rights" enumerated and defined in the E.S.C. Covenant are thus more in the nature of goals than of presently existing entitlements. Therefore, even if a right to water could be derived from the provisions of the E.S.C. Covenant -- which seems inevitable -- such a right would not necessarily have to be given immediate effect by the state concerned. But states parties to the E.S.C. Covenant would be under an obligation to work toward "achieving progressively the full realization" of the right, within the framework of the right to an adequate standard of living under article 11. This in itself would be an important and positive step forward.

If and to the extent that a right to water exists, what are the contents of that right? Certainly such a right would have to consist, at the very minimum, of a right to a sufficient supply of safe drinking water to sustain life. This right would entail a correlative obligation of the state to provide such a supply of water. Yet, as we have seen, the state's obligations under the E.S.C. Covenant are of a flexible nature, and are tied to available resources (financial as well as natural). The right to water, on the other hand, given the vital nature of the subject matter, would seem to be one which a state should be required to implement immediately, as is true of the rights under the C.P. Covenant. But as discussed above, it is not clear beyond all peradventure that a right to water is included within the right to life under the C.P. Covenant, since the latter right may be viewed to be exclusively a civil (liberty) right.

This result seems odd, to say the least. It causes one to wonder whether there are indeed sound reasons for the differences in the nature of the obligations undertaken by states parties under the two Covenants. And it reveals several defects in the differential approach to the obligations under the respective Covenants. Specifically, it is doubtful that the "immediate obligation"[47] to implement the

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(44) *Ibid.*, art 11, para. (1).

(45) On the subject of basic needs, see generally Radwan, "The Right to Health Within the Framework of Basic Needs", in *The Right to Health, supra* note 1, at p. 166.

(46) *Ibid.*, art. 2(1).

(47) T. Buergenthal, *supra* note 28, at p. 37.

rights under the C.P. Covenant, stringent though it may be, is an absolute one. Rather, it is most probably an obligation to exercise due diligence, or best efforts, to bring about the specified result. This, in itself, softens the obligations of states under the C.P. Covenant to some extent. Just as the obligations under the C.P. Covenant may not be so exacting as they appear at first blush, at least some of those under the E.S.C. Covenant may be unduly soft. In particular, it seems questionable whether *all* of the rights under the E.S.C. Covenant are appropriate for "progressive implementation tied to available resources. . . ."(48) It may well be that certain rights under that instrument either are not of a fundamental nature or would require the establishment of governmental infrastructures and the like to ensure their fulfillment. The latter point will be revisited presently. But other rights under the E.S.C. Covenant can hardly be described as being anything but fundamental. Indeed, article 11 itself refers to the "*fundamental* right of everyone to be free from hunger. . . ." This basic right can only be interpreted as a right to life-supporting sustenance, which would include potable water. Should these rights entail only "progressive" or "programmatic"(49) obligations of states?

First, it would seem appropriate for states to be under an "immediate obligation" to implement rights involving what may be described as basic, or essential needs under the E.S.C. Covenant. This would not necessarily be unduly burdensome because such an obligation, like those under the C.P. Covenant, would be in the nature of a duty to exercise due diligence to bring about the specified result. "Due diligence" is itself an elastic standard that takes into account the capabilities of the state concerned.(50)

Second, and more fundamentally, one could well question the premise that the differential nature of the obligations under the two Covenants is justifiable on the ground that those under the C.P. Covenant are largely "negative" (i.e., they merely require the state to refrain from certain acts such as torture and arbitrary imprisonment) while those under the E.S.C. Covenant are "positive" (i.e., they require the state to take affirmative steps to implement the obligations in question.(51) This premise, on examination, seems illusory. Susan Okin has pointed

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(48) *Ibid.*

(49) *Ibid.* at p. 45.

(50) That the rights under the E.S.C. Covenant depend upon the capabilities of the state in question, see Baier, "When Does the Right to Life Begin?," in *Human Rights, supra* note 29, p. 201, at pp. 219-220. See generally R. Pisillo Mazzeschi, "*Due Diligence" e Responsabilità internazionale degli Stati* (Milan: Dott. A. Giuffrè Editore 1989).

(51) One of the arguments frequently made against welfare rights as human rights is that they require positive state action, and indeed are very likely to enlarge the state's sphere of activity. Liberty rights, it is claimed, are, by and large, rights against the state, which are much easier to secure, since they require restraint on the part of the state. Okin, *supra* note 29, at p. 238. Such an explanation for the differential nature of the obligations under the two Covenants is given in T. Buergenthal, *supra* note 28, at pp. 44-45. But, as has been seen above, the Human Rights

out that "liberty rights" not only require the state to *refrain* from various types of activity, but also require "that the state *undertake* various types of activity, which are frequently complex and require much in the way of expenditure."(52) As examples, she cites the establishment of police forces, judicial systems and prisons, all of which "are necessary to maintain the highest achievable degree of security of these rights."(53) She points out that the protection these institutions provide "is enormously expensive and involves the maintenance of complex bureaucratic systems,"(54) yet even that protection is not always adequate.

Thus it is not entirely accurate to conceive of liberty rights as involving solely state restraint; like "welfare rights," securing them involves positive, and often resource-intensive, state action. The mere fact that the safeguarding of welfare rights may require positive state ation is therefore no objection to requiring their observance -- especially when the implementation of such rights is not an absolute, immediate obligation, but need only be accomplished progressively, within the limits of available recources. Further, in view of the importance of rights under the E.S.C. Covenant concerning basic needs such as food and water, a strong argument can be made that the standard to be applied in determining whether governments have adequately safeguarded those rights approaches that under the C.P. Covenant. That is, due diligence would require according priority to rights under the E.S.C. Covenant that concerned basic needs.

A final question might be raised with regard to the nature of the obligations of a state in respect of human rights involving basic human needs. It is whether states have an obligation to develop in such a way as to ensure the "sustainability" of their fresh water resources so that they remain adequate to meet those needs. If states are under an obligation to exercise their best efforts to ensure an adequate supply of water to meet basic human needs, it would seem to follow that they would be obligated to manage their resources and development in such a way as to ensure that such a supply was sustained for the benefit of present and future generations. This would again be in the nature of a due diligence obligation, which would depend upon the capabilities of the state concerned.

The present section has focused upon states' internal water resources. But in fact much of the world's fresh water is contained in international drainage basins -- that is, watersheds that are shared by two or more states.(55) May a state riparian to

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Committee has itself found that protection of the right to life requires that states adopt *positive* measures. See text at note 35, *supra*.

(52) *Ibid.*, at 240 (emphasis added).

(53) *Ibid.*

(54) *Ibid.*

(55) "[A] high proportion of the world's great basins are international. . . ." United Nations, Department of Economic and Social Affairs, *Integrated River Basin Development*, Report of a

an international watercourse fulfill the water needs of its population without regard to any adverse effects upon co-riparian states? Conversely, does a state riparian to an international watercourse have a right to receive water from a co-riparian that is qualitatively and quantitatively sufficient to meet the vital water needs of its population? These questions will be explored briefly in the following section.

III. The Right under International Law to Receive Water from A Co-Riparian Country

International drainage basins constitute some 47 percent of the Earth's land area, excluding Antarctica. They cover almost 60 percent of Africa and Latin America.(56) When these facts are coupled with the rapidly increasing use of fresh water discussed above, it becomes evident that the number and intensity of international disputes over fresh water are bound to rise dramatically in the years ahead. This sobering outlook imparts particular urgency to the questions framed at the end of the preceding section.

It should be stated at the outset that the present inquiry is merely another way of looking at questions that scholars and governments have grappled with for well over a century. An impressive array of treaties and other international instruments, mostly bilateral but some basin-wide,(57) regulates a number of aspects of our problems. But in many, if not most, of the areas of the world where international water problems are most acute, there is no agreement that addresses the specific questions relating to water shortage that are outlined above. This leaves the question whether there are any norms of general international law that deal with these issues. The most recent effort to codify the relevant principles of the law of international watercourses, the draft articles provisionally adopted by the International Law Commission in 1991,(58) at least provides an analytical framework for answering these questions.

Panel of Experts, U.N. Doc. E/3066/Rev.1 (1970), p. 8. See also the following section of the paper.

(56) Biswas, "Water for Sustainable Development, A Global Perspective," *Development and Cooperation*, No. 5/1991, p. 17, at p. 20 (1991).

(57) A systematic index prepared by the Food and Agriculture Organization of the United Nations (FAO) contains more than 2,000 instruments relating to international watercourses. FAO, *Systematic Index of International Water Resources Treaties, Declarations, Acts and Cases by Basin*, Legislative Study No. 15 (FAO, Rome 1978). A compilation of treaty provisions relating to non-navigational uses of international watercourses published by the United Nations in 1963 contains excerpts from 253 agreements. United Nations, *Legislative Texts and Treaty Provisions concerning the Utilization of International Rivers for Other Purposes than Navigation*, U. N. Doc. ST/LEG/SER.B.B./12 (United Nations: New York 1963).

(58) Draft Articles on the Law of the Non-Navigational Uses of International Watercourses, *Report of the International Law Commission on the Work of its Forty-Third Session*, 46 UN *GAOR* Supp.

To bring the problem more sharply into focus, let us assume that state A, an upper riparian country on an international watercourse,[59] the River Aqua, decides to undertake a series of projects for the development of its water resources that will reduce the flow of water to its downstream co-riparian states, B and C. The projects consist of a series of dams and other works that will produce electricity and permit the irrigation of thousands of hectares of previously unused but fertile land. Evaporation from the reservoirs behind the dams and from irrigation will mean a significant reduction of the quantity of water delivered to states B and C.[60] As is generally the case throughout the world, those states, whose topographies are relatively flat, had developed their water resources centuries before state A, whose topography is relatively mountainous. States B and C, being arid, contribute very little water to the River Aqua, and claim that state A's projects will not leave them sufficient water to provide an adequate supply of drinking water for their populations, let alone to grow the food necessary to feed them. What legal arguments are available to states B and C, and can any of those arguments find a basis on international human rights law?

It would far exceed the scope of this brief paper to attempt detailed answers to these questions. Since the aspects of the problem involving traditional international water law have been dealt with elsewhere,[61] the following preliminary discussion will concentrate on possible human rights implications. In particular, assuming that there is a human right to sufficient fresh water to sustain life, could it be argued that state A's project would violate this right of the nationals

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(No. 10), U.N. Doc. A/46/10 (1991), chapt. III, p. 152, at pp. 161-172 (hereafter referred to as ILC Articles).

(59) In the following discussion, I will use the expression "international watercourse" to mean not only a river crossing an international boundary, but also one which forms a boundary, a lake or an aquifer intersected by a boundary, as well as the other elements of any system of surface and underground waters, parts of which are located in more than one state. *Cf.* the International Law Commission's definitions of the expressions "watercourse" and "international watercourse" in article 2 of its draft articles on the Law of the Non-Navigational Uses of International Watercourses, ILC Articles, *ibid.* The term "co-riparian state" refers to a state in whose territory part of an international watercourse system is situated.

(60) This hypothetical fact situation is adapted from Turkey's Greater Anatolia Project (GAP) on the Euphrates River and its potential effects on the downstream countries of Syria and Iraq. The project is discussed in McCaffrey, "Water and International Politics", in P. Gleick, ed., *Global Water Resources: The Coming Crisis*, chapt. 8 (Oxford University Press, forthcoming 1992). The discussion could also be applied to Israel's actions with regard to the Jordan River and groundwater in the occupied West Bank, also dealt with in *ibid.*

(61) See, e.g., McCaffrey, *ibid.*; McCaffrey, "The Law of International Watercourses: Some Recent Developments and Unanswered Questions", 17 *Denver Journal of International Law and Policy* p. 505 (1989); and id., "The International Law Commission and Its Efforts to Codify the International Law of Waterways", XLVII 1990, *Annuaire suisse de droit international* p 32, at pp. 48, et seq. (1991).

of states B and C? This might seem odd at first glance since human rights are generally guarantees against the conduct of an individual's own government.(62) Yet would not an argument emphasizing harm to humans be far more powerful, at the very least on moral grounds, than one based on traditional notions of transboundary harm to an abstraction, namely, a state?(63)

Some support for such an approach may be found in article 10 of the ILC's draft rules. This article provides in part that where there is a conflict between uses of an international watercourse by different states, that conflict is to be resolved in accordance with the principle of equitable utilization and the obligation not to cause appreciable harm to co-riparian states. In resolving the conflict, however, "special regard [is to be] given to the requirements of vital human needs."(64) The Commission's commentary to that provision explains that, in resolving a conflict between uses by different states of an international watercourse,

> "special attention is to be paid to providing sufficient water to sustain human life, including both drinking water and water required for the production of food in order to prevent starvation."(65)

In our hypothetical fact situation, a conflict has arisen between the hydroelectric and agricultural uses of state A, on the one hand, and the domestic (specifically, drinking water) uses of states B and C, on the other. Article 10 would require that in allocating their shared water resources, the co-riparian states pay "special attention" to the drinking water needs of the populations of B and C. This, in effect, gives priority to the use of water for drinking over its use for power generation or agriculture, in the event that they come into conflict, as in our hypothetical case. The rationale for such a result would presumably be that human life takes priority over economic development. While this proposition may not be particularly controversial in the abstract, it could well be politically difficult for the government of state A to "sell" to its population.

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(62) Certain analogies might, however, be drawn in this connection to international humanitarian law. While that field deals, *inter alia*, with the protection of civilian populations in other countries in time of armed conflict, the policies underlying its basic precepts are applicable here as well.

(63) This would be one argument in the traditional arsenal, and perhaps the simplest to support factually. It would be based upon the maxim, *sic utere tuo ut alienum non laedas*, a principle in effect codified by the International Law Commission in article 7 of its draft articles, "Obligation not to cause appreciable harm." ILC Articles, *supra* note 58, p. 164.

(64) ILC Articles, *supra* note 58, article 10, "Relationship between uses,", p. 165.

(65) *Ibid.*, para. 4 of the commentary to article 10, at p. 180. The commentary also explains that the "vital human needs" criterion is "an accentuated form of the factor contained in article 6, paragraph 1 (b), which refers to the 'social and economic needs of the watercourse States concerned.'" *Ibid.* Article 6 sets forth an illustrative list of factors to be taken into account in arriving at an equitable allocation of the uses and benefits of an international watercourse system.

A more difficult question would be how the "vital human needs" requirement would apply to a situation in which the River Aqua did not deliver enough water to meet the drinking water needs of all of the three co-riparian states. For example, states A and B might have sufficient drinking water, but state C would not. It is submitted that the correct and only workable approach to problems of this sort is that of equitable apportionment.(66) Such an approach entails taking into consideration all relevant factors in arriving at an allocation of the uses and benefits of an international watercourse that is equitable under the circumstances.(67) Among those factors would be the ability of the respective states to save water through conservation, the availability of alternatives to existing consumptive uses, temporal priority of use, and the possibilities for compensation.(68) It may well be that in some cases the problem could not be solved by the co-riparian states alone, but would require the participation of third parties, such as donor countries or the multilateral development banks. But in any case, it seems clear that a state's "right" to receive water from a co-riparian state would find its limit in that country's obligation to use the international watercourse in an equitable and reasonable manner.

Conclusion

This paper has dealt with two separate but related ideas: the right to water as a human right; and the right of one state to receive water from a co-riparian state. These ideas, per se, have not been previously explored in the literature, so far as the author has been able to determine. The present analysis is therefore quite preliminary and tentative in nature. Certain points seem clear, however. One is that the right to food should be interpreted as the right to receive life-sustaining nourishment, or sustenance, so that it would include the right to potable drinking water sufficient to sustain life. A second point is that these rights are more akin to

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(66) Problems of this kind cannot be resolved solely on the basis of the obligation not to cause appreciable harm to co-riparian states. Under that standard, state A would have to deny its population drinking water so as not to cause "harm" to states B and C by depriving them of drinking water. This seems patently unrealistic and unworkable. This problem is discussed in the sources cited in note 61, *supra*.

(67) See article 5 of the ILC's articles, "Equitable and reasonable utilization and participation," and Article 6, "Factors relevant to equitable and reasonable utilization," ILC Articles, *supra* note 58, pp. 163-164.

(68) The latter factor concerns whether a water-short state (e.g., state C) would be in a position to compensate another co-riparian (e.g., state A) for foregoing some discretionary water-related benefits (such as the production of food for export) in order that the first state could have sufficient drinking water for its population. In cases such as the instant one, where there is insufficient water to satisfy the needs of all states concerned, those states might contribute on an equitable basis to the construction and operation of conservation measures or desalination plants.

the right to life under the C.P. Covenant than to many of the "welfare" rights under the E.S.C. Covenant. That is, they concern vital human needs, and are thus even more fundamental even than the kinds of "due process" protections that are enshrined in the C. P. Covenant. A state's due diligence obligation to safeguard these rights to sustenance should therefore be interpreted to require the state to accord priority to ensuring that such vital human needs are met. On the international level, it seems equally clear that one state cannot deny a co-riparian state water necessary for the survival of the latter's population on the ground that the water is needed for the economic development of the former. The conditions on which an equitable allocation would be effected would vary from case to case, but certainly human lives and even health should take precedence over economic development.

The International Conference on Water and the Environment (ICWE), which met in Dublin in January of this year, adopted a set of four Guiding Principles, the first of which is as follows: "Fresh water is a finite and vulnerable resource, essential to sustain life, development and the environment."(69) The Dublin Statement on Water and Sustainable Development, adopted by the Conference, begins with the following sobering reminder:

> Scarcity and misuse of freshwater pose a serious and growing threat to sustainable development and protection of the environment. Human health and welfare, food security, industrial development and the ecosystems on which they depend, are all at risk, unless water and land resources are managed more effectively in the present decade and beyond than they have been in the past.(70)

One way to encourage governments to manage their water resources so as to ensure their sustainability may be through international human rights law. In any event, without serious efforts to improve the management of this precious resource, economic development cannot be sustained, and in many countries, human life will not long endure.

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(69) International Conference on Water and the Environment (ICWE), Dublin, Ireland, 26-31 January 1992, Guiding Principles, Principle No. 1.

(70) *Ibid.*, The Dublin Statement on Water and Sustainable Development, first paragraph.

Human Rights and Protection of the Environment: A Mildly "Revisionist" View

GÜNTHER HANDL

I. *Introduction*

The concept of environmental rights as "new" human rights — "third generation", so-called "human needs" or "solidarity" rights(1) — is a relatively old one. So is the debate over whether such entitlements presently are, are about to be, or should be guaranteed in international law.(2) However, the upcoming 1992

(1) For critical comments on the usefulness of these labels, see Alston, "A Third Generation of Solidarity Rights: Progressive Development or Obfuscation of International Human Rights Law?", 29 *Netherlands Int'l L. Rev.* 307, at 316-19 (1982); Galenkamp, "Collective Rights: Much Ado about Nothing? A Review Essay", 3 *Netherlands Q. Human Rights* 291 (1991); and Meron, "On a Hierarchy of International Human Rights", 80 *AJIL* 1, at 2 (1986), who rightly criticizes that in the controversy over the ranking of the several generations of rights, "little attention is paid to the distinction between rights and claims".

(2) *See*, e.g., P. Gormley, *Human Rights and Environment: The Need for International Cooperation* (1976); Uibopuu, "The Internationally Guaranteed Right of an Individual to a Clean Environment," 1 *Comparative L.Yb.* 101 (1977); Jacobson, "The Extension of the European Convention on Human Rights to Include Economic, Social and Cultural Rights", 3 *Human Rights Rev.* 166, at 176-77 (1978); Dupuy, "Le droit à la santé et la protection de l'environnement", in R.-J. Dupuy, ed., *The Right to Health as Human Right* 340, at 403 (1979); Marks, "Emerging Human Rights: A New Generation for the 1980s?", 33 *Rutgers L. Rev.* 435 (1981); and Sohn, "The New International Law: Protection of the Rights of Individuals Rather than of States", 32 *American U.L.Rev.* 1, at 59-60 (1982). Among more recent analyses of these issue see, in particular, Gormley, "The Legal Obligation of the International Community to Guarantee a Pure and Decent Environment: The Expansion of Human Rights Norms", 3 *Georgetown Int'l Env. L. Rev. 85* (1990); Alfredson & Ovsiouk, "Human Rights and the Environment", 60 *Nordic J.Int'l L.* 19 (1991); Cançado Trindade, "The Parallel Evolutions of International Human Rights Protection and of Environmental Protection and the Absence of Restrictions upon the Exercise of Recognized Human Rights", 13 *Revista del Instituto Interamericano de Derechos Humanos* 35, at 59 (1991); Kiss, "Le droit à la conservation de l'environnement", *ibid.* 77; Shelton, "Human Rights, Environmental Rights, and the Right to the Environment", 28 *Stanford J.Int'l L.* 103 (1991); and

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United Nations Conference on Environment and Development which presents a potentially unique opportunity to write and refine basic international environmental law for the rest of the century and beyond, has again focussed attention on the concept of international environmental human rights.

For example, in September 1990, the Parliamentary Assembly of the Council of Europe adopted Recommendation 1130 (1990) (1) which provides for a human right to "an environment...conducive to...good health, well-being and full development of the human personality".(3) In October 1991, an ECE Experts Meeting in Oslo adopted a draft Charter on Environmental Rights and Obligations which proclaims among its fundamental principles everbody's "right to an environment adequate for his general health and well- being."(4) This formulation follows closely Principle 1 of a text adopted by the Experts Group on Environmental Law of the World Commission on Environment and Development in 1986.(5) More recently, the meeting of Associations of Environmental Law adopted a "Declaration of Limoges," which, once again, recommends recognition of a "human right to the environment" (recommendation 4).(6) These proposals have been made against the background of an on-going study by the United Nations Human Rights Commission's Sub- commission on Prevention of Discrimination and Protection of Minorities of the problem of the environment and its relation to human rights.(7)

Gros Espiell, "Introduction" [to "Community-Oriented Rights"], in M. Bedjaoui, *International Law: Achievements and Prospects* 1167, at 1171-72 (1991).

(3) Art.1 of the Text of a European Charter and Convention on the Environment and Sustainable Development, Council of Europe, Parliamentary Assembly, Recommendation 1130 (1990) (1) on the Formulation of a European Charter and a European Convention on Environmental Protection and Sustainable Development, adopted 28 September 1990, Doc. AREC1130.1403-28/9/90-27-E; reprinted in 1 *Yb.Int'l Env.L.* 484 (1990).

(4) Draft Charter on Environmental Rights and Obligations, *reprinted in* 21 *Env.Policy & L.* 81 (1991).

(5) "All human beings have the fundamental right to an environment adequate to their health and well being": Experts Group on Environmental Law of the World Commission on Environment and Development, *Environmental Protection and Sustainable Development: Legal Principles and Recommendations* 25 (1986).

(6) See Déclaration de Limoges - Extraits, 21 *Env.Policy & L.* 38, at 39 (1991).

(7) See *Human Rights and Scientific and Technological Developments: Proposals for a Study of the Problem of the Environment and its Relation to Human Rights*, Comm. on Human Rights, Sub-Comm. on Prevention of Discrimination and Protection of Minorities, U.N. ESCOR 42nd Sess., U.N. Doc. E/CN.4/Sub.2/1990/12 (1990); and *Human Rights and the Environment: Preliminary Report* prepared by Mrs. Fatma Zohra Ksentini, Special Rapporteur, pursuant to Sub-Commission resolutions 1990/7 and 1990/27, [hereafter: *Ksentini Preliminary Report*] Comm. on Human Rights, Sub-Comm. on Prevention of Discrimination and Protection of Minorities, U.N. Doc. E/CN.4/Sub.2/1991/8, 2 August 1991. The decision to undertake the study was clearly influenced also by the desire to provide a direct input into UNCED. See *Review of Further Developments in Fields with which the Sub-Commission has been concerned*, Comm. on Human

During the meetings of Working Group III of the UNCED Preparatory Committee itself, a number of states submitted proposals for a similar entitlement for inclusion in the Conference's final document on general rights and obligations, the "Earth Charter": The Chairman's consolidated draft[8] — now replaced by a set of draft principles proposed by the Chairman[9] - contained several provisions that emphasized a human right to a "healthy environment."

Support for international environmental human rights thus cuts across a wide spectrum of international public opinion.[10] We are witnessing not only a growing advocacy of environmental concerns as human rights issues. Increasingly, it is also being claimed that there exists already, or there is about to emerge, a broad generic entitlement to a healthy, decent or otherwise qualified environment. Indeed, often this entitlement is referred to simply as a "human right to the environment"[11] — unqualified.

The assumption that inspires a significant portion of the public discourse, namely that today the cause of environmental protection is furthered by the postulation of a generic human right to a decent or healthy environment,[12] however, is a problematical one. While it should be self-evident that there is a direct functional relationship between protection of the environment and the promotion of human rights,[13] it is much less obvious that environmental protection ought to be conceptualized in terms of a generic human right. Indeed, the emphasis on such a perspective on the interrelationship of human rights and environmental protection carries significant costs; it reflects a maximalist position that offers little prospect of becoming reality in the near term while its propagation diverts attention and efforts from other more pressing and promising environmental and human rights objectives. In short, a generic international environmental

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Rights, Sub-Comm. on Prevention of Discrimination and Protection of Minorities, UN ESCOR, 42nd Sess., U.N. Doc. E/CN.4/Sub.2/1990/NGO/13 (1990).

(8) *Principles on General Rights and Obligations, Chairman's Consolidated Draft*, Preparatory Committee for the United Nations Conference on Environment and Development, U.N. Doc. A/CONF.151/PC/WG.III/L.8/Rev.1, 30 August 1991.

(9) *See Principles on General Rights and Obligations, Draft Principles Proposed by the Chairman, Rio Declaration on Environment and Development*, U.N. Doc. A/CONF.151/PC/WG.III/L.33/Rev.1, 2 April 1992.

(10) See, generally, Alfredson & Ovsiouk, *supra* note 2, at 20- 21.

(11) See, e.g., Thorme, "Establishing Environment as a Human Right," 19 *Denver J. Int'l L. & Pol'y* 301 (1991).

(12) Indeed, it is often claimed that the necessity for a "right to a healthy environment" itself is not disputed: see Hodkova, "Is There a Right to a Healthy Environment in the International Legal Order?", 7 *Connecticut J.Int'l L.* 65, at 79-80 (1991).

(13) See generally, M.McDougal, H.Lasswell & L.Chen, *Human Rights and World Public Order* 38-44 (1980); and Ksentini, *Preliminary Report, supra* note 7. For an enlightening case study, see, e.g., A. Durning, *Apartheid's Environmental Toll*, World Watch Report No.95 (1990). See also *infra* TAN 62-64.

entitlement, both as an already existing and an emerging human rights concept, is a highly questionable proposition.

II. *Environmental Rights as Human Rights*

A. The Right to a Healthy Environment as an Existing or Emerging Human Right

1. The Probative Value of International Practice

(i) Some Theoretical Observations

At the outset it might be advisable to point out that the international human rights discourse continues to suffer from an unresolved "contradiction between conceptions of human rights as either inherent in human beings by virtue of their humanity or as benevolently granted by the state..." .(14) This affects not just the perception of the burden of proof but the very nature of the argument regarding the existence of such rights in general international law. For example, some adherents of a natural law theory of human rights might be apt to view any "just claim" as an existing human right.(15) Most international lawyers, however, are likely to agree that the process of international recognition of human rights evinces overlapping positive and natural law conceptions.(16) They are also likely to insist, notwithstanding the relative dearth of traditional state practice in the sense of international claims and counterclaims involving human rights, on evidence of actual supportive state practice remains an essential element of any persuasive argument that a given human rights claim is recognized by general international law.(17)

This evidentiary requirement applies firstly, even if we assume that by now states implicitly recognize the United Nations General Assembly's special declaratory authority to determine the human rights nature of claims;(18) and

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(14) Alston, "Making Space for New Human Rights: The Case of the Right to Development", 1 *Harvard Human Rights Yb.* 3, at 31 (1988).

(15) See, e.g., O'Manique, "Human Rights and Development", 14 *Human Rights Q.* 78, at 86-88 (1992); and *cf.* Burgers, "The Function of Human Rights as Individual and Collective Rights", in J. Berting, et al., eds., *Human Rights in a Pluralist World: Individuals and Collectivities*" 63, at 69-72 (1990).

(16) See, e.g., Sohn, *supra* note 2, at 19.

(17) On this point, see, for example, O. Schachter, *International Law in Theory and Practice* 336 (1991); and cf. Brownlie, "The Rights of Peoples in Modern International Law", in J. Crawford, ed., *The Rights of Peoples* 1, at 12-16 (1988).

(18) This view of the General Assembly's powers under the U.N. Charter, is most radically epitomized in Bilder's phrase "a claim is an international human right if the United Nations General Assembly says it is": Bilder, "Rethinking International Human Rights: Some Basic Questions" [1969]

secondly, notwithstanding the possibility that with respect to human rights claims, actual state practice may be less of an essential underpinning of international normativity than would be in the case in other claims contexts.(19) After all, from the perspective of assessing allegedly new customary international legal norms, including human rights norms, deeds speak louder than words:(20) only actual practice endorsing a claimed entitlement may provide a realistic measure of states' determination to render the prescriptive standard effective. Absent a "credible communication" to that effect, the alleged human rights standard is a mere paper right.(21)

In any event, a diminished evidentiary standard regarding actual practice might be applicable only to human rights that are fundamental or inalienable ones. What can be said with confidence, therefore, is that the more attenuated the natural law basis of an alleged human right, the more important will be support of evidence of its reflection in positive international law, i.e., the practice of states and other relevant transnational actors.

Leaving aside for the moment the problem of its intrinsic relativity,(22) the so-called "right to environment", or the right to a "clean," even to a "healthy environment" would be difficult to conceptualize as an inalienable one, notwithstanding the important objectives it purports to serve. If "inalienability"

Wisconsin L. Rev. 171, at 173 (1969). For a strong advocacy of the "authoritative interpretation approach" to international human rights, see especially Alston, "The Fortieth Anniversary of the Universal Declaration of Human Rights: A Time More for Reflection than for Celebration", in *Human Rights in a Pluralist World: Individuals and Collectivities", supra* note 15, at 1, 4. However, Alston, in proposing specific procedural guidelines — as against substantive criteria — for the "designation" of new human rights or the expansion of old ones by the General Assembly or organs subordinate to it, clearly admits of the pivotal significance of state practice. See Alston, "Conjuring Up New Human Rights: A Proposal for Quality Control", 78 *AJIL* 607, at 621-22 (1984).

(19) See, e.g., Bernhardt, "Custom and Treaty in the Law of the Sea", 205 RdC 247, at 267-68 (1987).

(20) It is true that in the case concerning *Military and Paramilitary Activities in and Against Nicaragua* (Nicaragua v. United States), [1986] *ICJ Reports* 14, at 109, para.207, the International Court of Justice, in assessing the legal significance of inconsistent state conduct, put special store by the absence of verbal affirmations contrary to the international standard in issue. However, unlike the present question of a generic environmental human right which would be a novel international legal concept, the Nicaragua case focussed on the evaluation of state practice in derogation from what the Court considered to be an established standard of international law, namely the principle of non-intervention.

(21) As Prof. Reisman might say, it would "be delusory to call a statement in the subjective mood a prescription or law if it is not accompanied by a credible communication that those who are prescribing it intend to and can make it controlling." See Reisman, "International Lawmaking: A Process of Communication", [1981] *ASIL Proceedings* 101, at 111.

(22) See instead *infra* TAN 70-84.

implies the impermissibility of derogations from the human right concerned,[23] it should be evident why any meaningful environmental entitlement[24] would not qualify: The evolution of environmental protection measures has involved a constant re-ordering of socio-economic priorities, of accomodating, adjusting, or off-setting mutually restrictive, if not exclusive, public policy objectives.[25] Environmental entitlements have been and will continue to be susceptible to restrictions for the sake of other, socio-economic objectives, such as ensuring continued "development" or "saving jobs". In short, since a generic environmental entitlement would not be inalienable,[26] it would not therefore share either a characteristic that is traditionally viewed as a hallmark of "natural" rights. Conceptually, it is instead squarely rooted in positive law.

Those who attempt to make the case for an existing or emerging generic environmental human right, therefore, would have to back up their claims by solid positive legal evidence. Alas, when analyzed in light of this evidentiary standard, the claims concerned are unpersuasive: Thus far, the idea of a generic entitlement — as against "sectoral" environmental rights of individuals — has not found express affirmation in any binding or effective international legal instrument.

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(23) Note, for example, the prohibition in international human rights instruments, such as the United Nations Covenant on Civil and Political Rights or the European Convention on Human Rights, of derogations from certain fundamental, because inalienable, rights. See, *e.g.* Art.4, para.2 of the Covenant; and Art.15, para.2 of the European Convention. See, generally, Sohn, *supra* note 2, at 18.

(24) "Meaningful" in the sense of an entitlement that is pegged at a level of environmental protection that does more than just ensure the physical survival of the holder of that right. The right to physical survival is, of course, a fundamental right. It is already guaranteed as the "right to life"; it need not be made to masquerade also as an "environmental human right".

(25) Consider, for example, the pivotal role that the balancing-of-interests test has played in the determination of international environmental entitlements. See, e.g., Bourne, "The International Law Commission's Draft Articles on the Law of International Watercourses: Principles and Planned Measures, 3 *Colorado J. Int'l Env.L.* 65, at 72-90 (1992); and Handl, "National Uses of Transboundary Air Resources: The International Entitlement Reconsidered", 26 *Natural Res.J.* 405, at 413-427 (1986).

(26) See, e.g., Dupuy, *supra* note 2, at 407, who referring to Principle 1 of the Stockholm Declaration, observes that "...le droit de l'homme à un environnement décent n'apparait pas ici comme inhérent à la condition humaine..."

(ii) Past Trends

One of the earliest characterizations of an entitlement that sounds like an environmental human right can be found in Principle 1 of the 1972 Stockholm Declaration on the Human Environment[27] which emphasizes that "[m]an has the fundamental right to...adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being..."[28] However, at the time of its adoption, Principle 1 — like much of the Stockholm Declaration on the Human Environment — was not understood to reflect customary law.[29] In discussing the results of Stockholm, the General Assembly did not specifically proclaim such an entitlement,[30] although in a resolution adopted that same day it expressly endorsed Principles 21 and 22 of the Declaration as laying down "the basic rules [of international law] governing this matter."[31] Finally, unlike, for example, Principle 21 of the Stockholm Declaration which already reflected significant preexisting international practice on the matter,[32] Principle 1 has not found express affirmation in subsequent state practice.

The present version of the "Rio Declaration on Environment and Development"[33] stipulates that human beings "are entitled to a healthy and productive life in harmony with nature".[34] Apart from the question whether this formulation does not actually signal a regressive development relative to the Stockholm Declaration, it is clear, however, that the document itself is not intended to be a formally binding one.

Some regional human rights regimes do endorse the notion of environmental entitlements. For example, the African Charter on Human and Peoples' Rights[35] stipulates all peoples' right to a "general satisfactory environment favorable to their development".[36] However, that article is hardly the kind of solid evidence of

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(27) On this point, see, e.g., Sohn, "The Stockholm Declaration on the Human Environment", 14 *Harvard Int'l L.J.* 423, at 455 (1973).

(28) Text *in* 11 *ILM* 1416, at 1417 (1972).

(29) Thus even as staunch a defender of a "human right to the environment" as Prof. Kiss, readily admits that the Stockholm Declaration — obviously including Principle 1 — did not constitute a legally binding text. See Kiss, *supra* note 2, at 78.

(30) See GA res. 2994 (XXVII), GAOR 27th Sess., Suppl. No.30 (A/8730), 42 (1972).

(31) See *International Responsibility of States in Regard to the Environment*, GA res. 2996 (XXVII), UN GAOR 27th Sess., Suppl. No.30 (A/8730) 42 (1972).

(32) Note, for example, its explicit endorsement as expressing a "common conviction" in the preamble to the 1979 ECE Convention on Long-Range Transboundary Air Pollution, 18 *ILM* 1442 (1979).

(33) Principles on General Rights and Obligations, Draft Principles proposed by the Chairman, Preparatory Committee for the United Nations Conference on Environment and Development, U.N. Doc.A/CONF.151/PC/WG.III/L.33/Rev.1, 2 April 1992.

(34) Principle 1, *ibid.*

(35) Text *in* 21 *ILM* 59 (1982). The Charter entered into force on 21 October 1986.

(36) Art. 24 of the African Charter.

positive international law that is required to prove the existence of a generic entitlement in general international law: not only does this provision suffer from an excessive vagueness that is apt to raise *a priori* legitimate questions about the true legislative intent of the drafters given the absence of an effective international review mechanism.(37) To date this provision, like much of the remainder of the Charter, has for all practical purposes also remained dead-letter law.(38)

In the Americas, the 1988 Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights(39) has broken new ground by including a basic environmental right. Its Article 11 provides for everyone "to have the right to live a healthy environment"... So far, however, the Protocol has attracted only two ratifications (Suriname and Costa Rica) and thus has not entered into force.

Within the context of the Council of Europe, on the other hand, efforts to establish a human right to a healthy environment have stalled ever since a proposal to this effect was first made in the 1970s.(40) As noted before, in 1990, the Parliamentary Assembly, in recommending the preparation of a European charter and convention on environmental protection and sustainable development, called for the establishment of an environmental human right.(41) However, to date, this recommendation has not been acted upon by the Committee of Ministers.

There are, to be sure, other international instruments that feature provisions on the protection of the environment for the specific benefit of all human beings or individual groups or peoples. For example, the ILO Convention on Indigenous and

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(37) For a very critical view of the African Charter in general, on account of the vagueness of its provisions, its "clawback" clauses and the lack of adequate supervision, see Gittleman, "The Banjul Charter on Human and Peoples' Rights: A Legal Analysis", in C. Welch & R. Meltzer, eds., *Human Rights and Development in Africa* 152 (1984); see also Scoble, "Human Rights Non-Governmnetal Organizations in Africa: Their Problems and Prospects in the Wake of the Banjul Charter, *ibid.* 177.

(38) For recent pessimistic assessments of the Charter's effectiveness and an analysis of underlying reasons, see van Walraven, "Human Rights Developments in Africa: The Banjul Commission, Multipartyism and the Battle for Democracy," 9 *Netherlands Q. Human Rights* 192 (1991); and Welch, "The African Commission on Human and Peoples' Rights: A Five Year Report and Assessment", 14 *Human Rights Q.* 43 (1992).

(39) Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador) of 14 November 1988, reprinted *in* 28 *ILM* 161, at 165 (1989).

(40) See Council of Europe, *Proceedings of the European Ministerial Conference on the Environment*, Vienna, 28-30 March 1973, 122; and Draft Protocol to the European Convention on Human Rights and Fundamental Freedoms, reproduced in A. Rosas et al., eds., *Human Rights in a Changing East-West Perspective* 229 (1990).

(41) See *supra* note 3.

Tribal Peoples[42] requires states to adopt special measures "as appropriate for safeguarding the...environment of the peoples concerned".[43] Similarly, in the 1991 Arctic Environmental Protection Strategy, the Arctic countries commit themselves to ensure the protection of the Arctic environment while protecting the culture of indigenous peoples.[44] But, once again, such instruments could hardly be relied upon as evidence supporting the existence of "international" environmental entitlements of individuals or groups, let alone of human rights.[45] Without regard to the merits or demerits of a dualistic conception of the relationship of international and domestic law, it must be said that these, or similar instruments, detail obligations of states arising among states parties. While these state obligations may enure to the benefit of individuals, they do not create individual rights,[46] the critical point being, of course, that the states parties cannot be said to have intended to create such individual entitlements.[47]

In short, there is no hard evidence to suggest that states generally might have accepted a generic environmental human right. Its proponents must, therefore, base their case on evidence that is indirect[48], normatively "soft", or often exceedingly

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(42) Convention Concerning Indigenous and Tribal Peoples in Independent Countries, ILO Covention 169, 1989, *text in* 28 *ILM* 1384 (1989).

(43) *Id.* art. 4, para.1.

(44) See Part 1 of the Arctic Environmental Portection Strategy, June 14, 1991, *text in* 30 *ILM* 1627 (1991).

(45) As to the distinction between "human rights" and other internationally guaranteed "individual rights" and "group" or "collective rights", *see infra* TAN 118.

(46) On the critical need to distinguish between "benefits" and "rights" flowing from an international *agreement*, see also A. Verdross & B.Simma, *Universelles Volkerrecht* 255-56 (3rd.ed. 1984). Thus, the issue of whether international obligations of states on behalf of individuals or groups can be viewed as establishing international invididual or human rights, is of course, related to, but must be distinguished from, the question of whether such obligations are directly invocable by the individuals or groups concerned either on the international plane or in domestic proceedings. As to the need for distinguishing the existence of an individual's international right and his/her capacity to assert it in the international sphere, see H. Lauterpacht, *International Law and Human Rights* 27-28 (1973). As to the policy considerations underlying direct domestic applicability and invocability of treaty provisions bestowing benefits on individuals, *see* generally, Jackson, "Status of Treaties in Domestic Legal Systems: A Policy Analysis, 86 *AJIL* 310, at 317-18 (1992).

(47) Thus, unlike the treaty situation giving rise to the *Danzig Railway Officials* case, [1928] PCIJ Ser.B, No.15, at 17, which according to the Permanent Court of International Justice clearly evinced the state parties' intention to create "individual rights and obligations and enforceable by the national courts", no such intention can be gleaned from the above instruments.

(48) It is, of course, correct, as Dinah Shelton points out, that United Nations organs themselves have used an indirect approach and have avoided explicitly endorsing a generic environmental human right. See Shelton, *supra* note 2, at 112. However, this fact hardly strengthens the case for a generic environmental human right. Quite the opposite is the case: practice within the United Nations clearly reflects states' latent ambiguities and concerns related to the postulation of such a right.

limited in scope relative to the broad normative concept claimed. Some proponents of a generic environmental human right thus point to the fact that it is "derivable" from United Nations legal instruments or other "previously recognized human rights" as evidence of its present existence in customary international law.[49] While it is self-evident that human rights are normatively interrelated, existing human rights and their enjoyment are "different" from the proposed new environmental entitlement.[50] In other words, the existence of an established human right that is conceptually related, perhaps in some way even logically antecedent, to the claimed environmental entitlement, cannot be invoked dispositively to establish the latter's international normativity as "derived from," or "subsumed under," the former's. It is thus worth noting, for example, that in *Rayner v. United Kingdom* the European Commission of Human Rights held that Article 1 of Protocol No.1 which guarantees the right to the peaceful enjoyment of possessions, "does not, in principle, [also] guarantee a right to the peaceful enjoyment of possessions in a pleasant environment."[51]

Another illustration of this point involves the right to health. The fact that states have committed themselves internationally to recognize a human right to the protection of health, cannot be taken to imply that individuals also have a corresponding human right to a healthy environment. Much is being made in this context of practice under the European Social Charter of 1961[52] as supporting the validity of such a normative extension.[53] Article 11 of the Charter implies a right to the protection of health.[54] Over time, the Charter's Committee of Independent Experts has come to suggest that states be deemed to have discharged their obligation under Article 11, if they provide evidence of having taken *inter alia* "general measures aimed...at the prevention of air and water pollution, protection from radio-active substances, [and] noise abatement..."[55]

What the Committee thus — modestly — emphasizes is that the states concerned have a general, and at that, an essentially procedural obligation that extends to environmental factors that could impair individual health. Article 11 itself does not lay down a substantive health objective, however vaguely defined. And for good reason: states would not support the creation of such a right.[56] Nor

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(49) See Thorme, *supra* note 11, at 319.

(50) See Alfredsson & Ovsiouk, *supra* note 2, at 23.

(51) Appl. 9310/81, 47 *D & R* 5, at 14 (1986).

(52) 529 UNTS 89; Eur. T.S. No.35

(53) See, e.g., Cançado Trindade, *supra* note 2, at 59.

(54) "Everyone has the right to benefit from any measures enabling him to enjoy the highest possible standard of health attainable".

(55) See Council of Europe, Committee of Independent Experts on the European Social Charter, *Conclusions I*, 1969-70, 59, para.3.

(56) Note in this context, the continued lack of action by the Committee of Ministers of the Council of Europe on the recommendations of the Parliamentary Assembly, *supra* note 3.

does the Committee's interpretation imply the existence of such an objective which clearly would mark a qualititatively different, much more stringent obligation for states. It might be noted, moreover, that the Committee's determinations of states' compliance with the Charter are formally not binding.(57) In short, practice under Article 11 cannot be introduced in support of the existence of an environmental entitlement that contains a quality objective, such as the alleged "human right to a healthy environment".

As the evolution of human rights(58) is "gradual and largely incremental",(59) continuous promotion in various fora, by a variety of actors, is a characteristic aspect of the process by which international legal recognition of the claimed right is being secured. However, it is precisely because of the nature of this evolutionary process that international environmental and human rights observers must pay special attention to the normative dividing line and avoid misrepresenting mere aspirational environmental human rights concepts for "hard law". The burden of proof regarding international recognition of environmental human rights claims cannot be discharged by a talismanic invocation of non-binding resolutions or other documents or policy proposals. In the final analysis, what is required is, as pointed out before, evidence of unequivocal support by states. After all, international law is, as Ian Brownlie puts it, "about the real policies and commitments of governments, it is not about the incantations of secular or religious morality".(60) Thus, even if allowance is being made for the fact that today the international law-making process is more consensual, less consent-based,(61) it would be disingenious to propose the existence of a normative concept with such fundamentally important implications for the allocation of socio-economic and environmental decision-making, as a generic environmental human right, unless there is explicit state practice endorsing it.

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(57) Besides, the Committee's responsibility, at least thus far, has been shared with the Charter's Governmental Committee. The 1991 Protocol Amending the European Social Charter, however, entrusts this determination exclusively to the Committee of Independent Experts while the Governmental Committee's function is reduced to one of primarily advising the Committee of Ministers with regard to recommendations to states in cases of non-compliance as determined by the Committee of Independent Experts. See Protocol Amending the European Social Charter, done at Turin, October 21, 1991, reproduced *in* 31 *ILM* 155 (1992).

(58) The idea that human rights are not hewn in stone but evolve and expand in response to social change, appears to be well accepted now. See, *e.g.*, Bilder, *supra* note 18, at 175; Alston, *supra* note 18, at 607; Flintermann, "Three Generations of Human Rights" in *Human Rights in a Pluralist World, supra* note 15, at 75, 76. See generally, Fields & Narr, "Human Rights as a Holistic Concept", 14 *Human Rights Q.* 1, at 9-10 (1992).

(59) J. Donnelly, *Universal Human Rights in Theory and Practice* 223 (1989).

(60) Brownlie, "The Rights of Peoples in Modern International Law", 9 *Bull. Australian Soc'y Legal Phil.* 104, at 116 (1985), quoted *in* Alston, "Making Space for New Human Rights: The Case of the Right to Development", 1 *Harvard Human Rights Yb.* 3, at 5, fn.13 (1988).

(61) See, e.g. O. Schachter, *supra* note 17, at 10-14.

This is, of course, not to deny that human rights instruments may have significant operational implications for environmental protection purposes. After all, as a legal challenge, environmental protection is a cross-sectoral enterprise; it cuts across many different fields of law, including human rights law.(62) Thus, environmental concerns may well be redressed incidentally — par ricochet,(63) so to speak — by application of established human rights norms. For example, in *Arrondelle v. United Kingdom*, a case that was eventually settled amicably, the European Commission of Human Rights found admissible the applicant's claim that Article 8 of the European Convention — regarding the right to respect for privacy — might be violated on account of airport noise pollution.(64)

But it is one thing to acknowledge that human rights provisions are amenable to being, and have been, utilized to secure incidental environmental objectives. It is something altogether to proceed from this evidence to the postulation of an existing fundamental human right to a clean environment.

In sum, international practice does not support the claim of an existing generic human right to a healthy environment. The evidentiary basis that proponents of such a right relie upon is simply too narrow or normatively too weak to lend itself to that major normative extrapolation that a human right to a healthy environment would undoubtedly represent.

2. *The Probative Value of Domestic Legislation*

In a second line of evidentiary argument, proponents of an existing human right to a clean environment, point to a trend towards enshrining environmental rights in national constitutions. There is no denying that the number of states which have already enacted or are seriously considering such constitutional provisions is rising.(65) However, this type of evidence, without more, i.e., without an indication

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(62) In German, environmental law is thus appropriately referred as constituting a "Querschnittsmaterie".

(63) See G. Cohen-Jonathan, *La convention europeéne des droits de l'homme* 84 (1989).

(64) Appl. 7889/77, *Arrondelle v. United Kingdom*, 19 *D & R* 186, at 198 (1980); and 26 *D & R* 5 (1982); and see Application No. 9310/81, *Baggs v. United Kingdom*, 43 *D & R* 13 (1985). But see, e.g., *Case of Powell and Rayner*, ECHR (3/1989/163/219), Judgment of 21 February 1990, another airport noise pollution case, in which the European Court declined to hold that the British government had violated Art.8 in respect of either applicant.

(65) Recent examples of this "constitutionalization" of environmental rights include Art.79 of the 1991 Constitution of Colombia which provides for "every person's right to a healthy environment"; Art.30 of South Africa's proposed Bill of Rights which would establish a far-reaching constitutional entitlement with regard to the environment; or Art.29 of the Declaration of Human Rights and Freedoms adopted by the former Soviet Congress of People's Deputies on September 5, 1991, which proclaimed *inter alia* a person's "right to a favorable natural environment...". For surveys of these constitutional developments, *see* Kiss, *supra* note 2, at 79; and Brandl & Bungert, "Constitutional Entrenchment of Environmental Protection: A Comparative Analysis of Experiences Abroad", 16 *Harvard Env.L.Rev.* 1 (1992). See also

of actual domestic practice consistent with these provisions, remains largely irrelevant as to the existence of the basic environmental entitlement here under consideration: "[C]onstitutions with human rights provisions that are little more than window-dressing can hardly be cited as significant evidence of practice or 'general principles' of law".(66)

An analysis of the effectiveness of constitutional environmental entitlements in domestic practice tends to show indeed that most of the provisions appear to be dead letter law:(67) while the formal constitutionalization of environmental entitlements is consistent with the myth of societal recognition of environmental protection as a priority, the underlying "operational code", as evidenced either in many of the environmental provisions' inherent ambiguities, or the absence of enforcement mechanisms, etc., tends to signal an unwillingness to enforce that standard or recognition of its socio-economic or political unsuitability as an operational legal concept.(68)

In terms of both the present-day existence *vel non* of a corresponding international legal norm, or even as an indication of international public policy, little, if any, probative value can therefore be said to attach to the growing number of domestic constutional environmental rights. If, therefore, the assumption must be that with regard to a generic environmental human right — at least in the sense of a customary international entitlement — we are still at the stage of advocacy,(69) it is not only advisable but essential to review again the intrinsic merits of postulating a human right to a "clean" or otherwise meaningfully qualified environment.

B. The Alleged Right from a Policy Perspective

1. The Normative Ambiguity of a Generic Environmental Entitlement.

One of the more problematical aspects of a proposal for a generic environmental human right is the latter's inherent normative ambiguity. Even as

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Kromarek, "Quel droit à l'environnement? Historique et développements", in P. Kromarek, ed., *Environnement et droits de l'homme* 113 (1986).

(66) O. Schachter, *supra* note 17, at 336.

(67) For example, in their survey of 10 countries of the First and Third World, Brandl & Bungert conclude that the constitutions of only a minority of these actually recognize a "fundamental right to environmental protection", but that "even in these countries this 'right' is either unenforceable or enforceable only to a limited extent." See *supra* note 65, at 81-82.

(68) For an exposition of the crucial role of *lex imperfecta* and *simulata* in expressing the distinction between myth system and operational code, see M. Reisman, *Folded Lies: Bribery, Crusades and Reforms* 29-33 (1979).

(69) See also Klein, "Recht auf Umweltschutz als vlkerrechtliches Individualgrundrecht?", in J. Schwarze & W. Graf Vitztum, eds., *Grundrechtschutz im nationalen und internationalen Recht* 251 (1983); Dupuy, *supra* note 2, at 404-05, 413; Shutkin, "International Law and the Earth: The Protection of Indigenous Peoples and the Environment", 31 *Va.J.Int'l L.* 479, at 505 (1991).

refined a formulation as the one adopted in the draft ECE Charter,[70] — "every person's right to an environment adequate for his general health and well-being" — fails to reduce significantly, let alone to eliminate, the normative relativity intrinsic to such a concept.

The point of this observation is not to suggest that this lack of precision might render the proposed environmental entitlement non-justiciable and thereby to call into doubt such a provision's basic suitability as an effective international legal standard. After all, in international law in general, and human rights law in particular,[71] formal justiciability cannot be equated with "international enforceability" or, for that matter, with international normativity. Rather, the point here is that, on top of "normative indeterminacy" per se, any generic environmental human right "suffers" from the fact that it signals a very broad entitlement, one that might turn into an extremely effective legal platform for internationalizing national decision-making in areas that represent the core of traditional state sovereignty. Given these implications, it is safe to assume that states in general would be reluctant to support policies or measures promoting implementation of such an "intrusive" human rights standard. Without such steps, however, a generic environmental human right is bound to fall short as an operationally meaningful international standard against which to assess state conduct. At the same time, it is, somewhat paradoxically, this very normative ambiguity that may well provide an incentive for states to formally recognize a generic environmental entitlement as a new human rights standard.[72]

The exact limits of any given right or obligation, of course, will depend on context. This is, perhaps, more generally evident in the case of international legal norms than domestic ones. However, a context-dependent human right to a healthy environment — without further qualification — implies an entitlement of potentially widely varying contents. Indeed, one's "environmental human right" is likely to be of a different nature altogether, depending on where one is located, in the North as against the South, in a developing country or a developed nation, etc. This inherent relativism renders the claimed human right also potentially meaningless as an international normative standard:[73] The standard turns into an

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(70) See *supra* note 4.

(71) On this point, see, e.g., Kiss, "Définition et nature juridique d'un droit de l'homme à l'environnement", in P. Kromarek, ed., *supra* note 65, at 13, 24.

(72) States might well agree to formally recognize a generic environmental human right in the safe knowledge that, without more, their action would not create an effective standard of states' international accountability while, at the same time, they would be seen as championing both environmental and human rights causes.

(73) For an illustration of the problem of assymetrical rights and obligations with regard to core provisions of an international legal regime, see Handl, "Environmental Security and Global Change: The Challenge to International Law", 1 *Yb.Int'l Env.L.* 3, at 8-10 (1991).

empty formal shell. At the same time it loses a fundamental defining characteristic of a human right, i.e., universal validity.(74)

Many commentators are acutely aware of this problem. For example, Alfredson and Ovsiouk acknowledge that "[c]urrent work on the right to a clean and healthy environment as a human right is still vague and inadequate as to the formulation of standards and practical methods of implementation."(75) Some proponents, however, might counter by pointing to the fact that problems of interpretation and application arise also with regard to established human rights, for example over such terms as "due process", "ordre public", "national security", etc.(76) Yet, normative variations due to context-dependent interpretations of these concepts represent "limitations" on or "derogations" from human rights. i.e., exceptional restrictions that are not "to swallow or vitiate the right itself."(77) In other cases, and unlike the situation involving a generic environmental entitlement, the contextually determined human right is a narrowly foccussed one, a case in point being the "right to primary education".(78)

There are, admittedly, other human rights claims of a seemingly similarly indeterminate nature which are commonly assumed to be on the point of gaining formal international legal recognition as, for example, the "right to development".(79) But the legal status of these entitlements does not augur well for a generic environmental human rights proposal. Consider the right to development: its lack of normative precision(80) coupled with its broad socio-economic

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(74) Notwithstanding the implications of cultural relativism for a context-sensitive application of human rights standards, there is general agreement that the basic concept of human rights is one of universal applicability. For example, Fields & Narr observe that "to the extent that the human being is naturally a social and political animal, human rights have a universal applicability": see *supra* note..., at 20. Similarly, An-Nam admits that "despite their apparent peculiarities and diversity, human beings and societies share certain fundamental interests, concerns, qualities, traits and values that can be identified and articulated as the framework for a common "culture" of universal human rights": An-Nam, "Toward a Cross-Cultural Approach to Defining International Standards of Human Rights", in A. An-Nam, ed., *Human Rights in Cross-Cultural Perspectives: A Quest for Consensus* 19, at 21 (1992). See *also* J. Donnelly, *supra* note 59, at 124. Thus McDougal, Lasswell and Chen's conception of human rights is one that "transcend[s] all differencies in the subjectivities and practices of peoples, not merely across nation-state lines, but as between the different cultures of the larger community": *supra* note 13, at xvii.

(75) See *supra* note 2, at 25.

(76) See Kiss, *supra* note 2, at 83-84; and Shelton, *supra* note 2, at 135.

(77) See Kiss, "Permissible Limitations on Rights", in L. Henkin, ed., *The International Bill of Rights: The Covenant on Civil and Political Rights* 290 (1981).

(78) This example is given by Alston, *supra* note 18, at 614; and is approvingly cited by Cançado Trindade as an illustration of the inevitability, indeed normalcy of a contextual application of broad human rights concepts. See Cançado Trindade, *supra* note 2, at 63.

(79) See, e.g., I. Brownlie, *Principles of Public International Law* 579 (4th ed., 1990).

(80) Thus Philip Alston notes that notwithstanding the 1986 Declaration, [f]urther precision as to the rights and obligations which are entailed is clearly required": Alston, *supra* note 14, at 37.

implications, continues to be viewed by many as a serious obstacle to accepting its international legal, as against moral, validity. Indeed, the right to development remains highly controversial, notwithstanding its specific endorsement and amplification by the General Assembly.(81) Thus, even staunch supporters of its formal recognition in present international law acknowledge that the right to development remains essentially ineffective.(82) The same fate is likely to await a generic human right to a healthy environment.

There is another, already alluded to, negative aspect to the fact that any operationalization of a generic environmental human right would be highly context-dependent: the concept's inevitably normative relativity would undermine the notion of human rights generally. It devalues the symbolic value of the traditional human rights label that implies a core notion of a universally valid legitimate claim.(83) Human rights lawyers therefore should be, and many are indeed, concerned about the proposed extension of the concept — in generic fashion — to the environmental agenda and the resulting debasing of the human rights "currency".

Moreover, as a matter of strategy, an effective promotion of both human rights and environmental protection objectives would imply that efforts be focussed on securing new, and expanding on existing, narrowly defined environmental rights of individuals or groups. Those who call instead for recognition of a broad generic environmental human right are putting the cart before the horse: for the reasons alluded to above, formal international recognition of a generic environmental entitlement cannot evolve into an effective environmental human rights standard, until and unless its specific normative implications, both procedural and substantive, have been authoritatively clarified;(84) or states entrust the task of putting flesh on the skeletal, because indeterminate, generic environmental human right to an institutionalized international process. But such a surrender of sovereignty is an unlikely prospect at best.

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(81) See General Assembly resolution 41/128 of December 1986, adopting the Declaration on the Right to Development.

(82) Thus Bedjaoui admits that "[i]t is clear...that a right which is not opposable by the possessor of the right against the person from whom the right is due is not a right in the full legal sense. This constitutes *the challenge which the right to development throws down to contemporary international law*...: Bedjaoui, "The Right to Development", in A. Bedjaoui, *International Law*, *supra* note 2, at 1177, 1193.

(83) See Bilder, *supra* note 18, at 174-75.

(84) For example, Prof. Shelton, who in principle supports the idea of a generic right to a healthy environment, acknowledges that ultimately specific substantive environmental standards are indispensable to render such an entitlement operational. See Shelton, *supra* note 2, at 135 & 138; and Dupuy, *supra* note 2, at 410-11.

2. *The Appropriateness of a Generic Human Rights Platform for Vindicating Collective Environmental Interests.*

Enjoyment of human rights is, of course, premissed on a modicum of environmental stability. This axiomatic relationship, however, cannot mask the fact that, as the focal point of a human rights campaign, a generic environmental entitlement is an ill-considered proposition for a number of additional reasons.

Narrowly defined environmental objectives may, of course, be vindicated through the assertion of individual human rights as in a situation in which environmental conditions pose a threat to life or health.(85) Likewise, as mentioned before, environmental protection objectives may be incidentally vindicated in human rights complaints.

The proposed generic environmental human right, by contrast, would make broad environmental policy decisions, such as standard-setting — the determination of what is a "healthy environment" or what constitutes an "adequate margin safety", etc. — , a central concern of an individual-right-based process. Thus, while its various formulations clearly bespeak an individual right,(86) the thrust of a generic entitlement to a clean or healthy environment is to vindicate a collective interest. Conversely speaking, while the environmental interests/rights to be protected work primarily to the benefit of the collectivity,(87) its operationalization would occur at the level of individual rights complaints.(88) The nature of the proposed "right to a healthy environment" is thus indeed, as Prof. Cançado Trindade acknowledges, "multifaceted".(89) Its inherent conceptual tension, however, very much calls into

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(85) See, e.g. the case involving the storage of nuclear waste near residential areas, Communication No. 67/1980 on behalf of the present and future generations of Port Hope, Ontario, to the U.N. Human Rights Committee, alleging a violation of Art.6 (1) of the U.N. Covenant on Civil and Political Rights. *See* 2 *Selected Decisions of the Human Rights Committee under the Optional Protocol*, U.N. Doc. CCPR/C/OP2, 20 (1990). At times, individual and group rights perspective might, of course, merge entirely with environmental concerns as, for example, in the context of siting waste dumps or hazardous industrial facilities, or of the forced migration of indigenous people as a result of environmentally intrusive development projects.

(86) See *supra* TAN 3-6 & 35-39.

(87) This is also why the right to a healthy environment has frequently been viewed as falling into the "collective rights" category. See, e.g., Vasak, "Le droit international des droits des hommes", 140 *RdC* 333, at 344-45 (1974).

(88) Thus many commentators view the "right to a healthy environment" as an individual right. See Galenkamp, *supra* note 1, at 300-01. Prof. Kiss, in defining the entitlement as a "right to the conservation of the environment", concludes that, as regards its implementation, "[a]insi conçu, il peut être assimilé à la plupart des autres droits garantis": Kiss, *supra* note 2, at 84. Bugers notes that, in principle, the "right to an unspoilt environment" is held by the individual, not collectivities: Bugers, *supra* note 15, at 73. Cf. also Cançado Trindade, *supra* note 2, at 64.

(89) Cançado, *supra* note 2, at 66.

doubt the appropriateness or usefulness of the proposed entitlement as a basis for vindicating environmental protection objectives.

(i) The Individual Claimant and the Focus of the Process

Generally speaking, the role of an individual as a claimant in a situation where his/her legal interest/right merges with, indeed is overshadowed by the interests of society at large, is a limited one. This is not only typical of domestic legal proceedings,(90) but is also true of proceedings on the international plane, including proceedings which involve claims that, at least *lato sensu*, fall into the human rights category.(91) For example, the United Nations Human Rights Committee recently accepted Canada's contention that under the Optional Protocol a complainant, as an individual, did not have standing to claim to be a victim of an alleged violation of the right to self-determination, a collective right, enshrined in Article 1 of the Covenant.(92) The fact that individuals are capable of playing only a limited role with regard to situations of overlapping individual and collective interests/rights is highlighted also by the recommendation of the recent Council of Europe Conference on the European Social Charter that a system of collective complaints be established,(93) a step which, in the words of Prof. Harris, "would do as much as anything to enhance the impact of the Charter".(94)

Limitations upon an individual's role as a claimant in this sense, are especially common in the context of environmental protection proceedings. Thus, domestic environmental decision-making — and there is little experience with how the above mentioned generic constitutional entitlements might be operationalized at the level of individual claims(95) — shows that in these types of cases, the invocation of broad-based individual entitlements is discouraged.(96)

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(90) See *infra* TAN 95-98.

(91) Thus, some commentators formally classify the "right to self-determination" as a human right": See Burgers, *supra* note 15, at 73.

(92) See Communication No.167/1984, Bernard Ominayak, Chief of the Lubicon Band v. Canada (Views adopted on 26 March 1990 at the Thirty-Eighth Session), in *Report of the Human Rights Committee*, Volume II, Annex IX, 9, para. 13.3, GAOR, 45th Sess., Suppl. No.40 (A/45/40) (1990).

(93) See Council of Europe Ministerial Conference on the European Social Charter, Turin, 21-22 October 1991, Final Resolution of the Conference, text *in* 31 *ILM* 161, at 162 (1992).

(94) Harris, "Introductory Note", ibid. 155, at 156.

(95) See Brandl & Bungert, *supra* note 65.

(96) Instead, the role of individuals tends to be limited to ensuring compliance by the public (as well as possibly the government itself) with *a priori* well-defined environmental protection standards. Examples of such recently enacted limited, functional entitlements of individuals include the citizen suit provision of the 1990 U.S. Clean Air Act, § 304(a)(1-2), 42 U.S.C. § 7604(a)(1-2). See also Article 88 of the 1991 Colombian constitution: see Sarmiento, "Colombia", 2 *Yb.Intl' Env.L.*

One obvious reason for this is that the focus of inquiry in a case involving an individual complainant is by definition too limited to ensure consideration of all societal interests at stake in the disposition of the claim. Thus, in an exemplary decision, *Boomer v. Atlantic Cement Company*,(97) a United States court found that a nuisance-type approach to determine an individual plaintiff's degree of protection against ambient air pollution was ill-suited: its structure of the process failed to make allowance for taking into account evolving national policy on the scope of air pollution rights.(98) A further consideration was, of course, that a case-by-case development of general environmental standards in response to individual complaints would be a very inefficient process.

The proposed generic human rights concept must be faulted on both these counts in that it offers exactly the prospect of a too narrowly focussed, piece-meal approach to setting general environmental policy. Thus, as an individual's entitlement, the concept does not offer a platform from which to push the general environmental agenda, nor does it provide individuals with access to international fora to enable them, at the international level, to offer a balancing perspective, a counterweight, as it were, to official governmental positions on environmental matters.

Whether or not, as some suggest, such an entitlement might give rise only to claims that can be asserted collectively through political means,(99) the fact is that many of the objectives that it might be intended to serve, can already be realized through alternative processes. Consider for example, the insertion of nonstate perspectives into the international environmental decision-making process: non-governmental organizations (NGOs) already successfully utilize existing *de-facto* avenues to international fora for that purpose. Indeed, today, NGOs fulfill an enormously important function in the application and enforcement of international environmental legal standards. They have become involved in the gathering and dissemination of environmental information, policy advocacy and the appraisal of failure or success of policies in the light of avowed public policy objectives. Most

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260 (1991); and *id.* "Popular Action and the Defense of the Environment in Colombia", in S. Bilderbeek, ed., *Biodiversity and International Law* 184 (1992).

(97) 257 N.E. 2d 870 (1970).

(98) "A Court should not try to...[redress air pollution] as a by-product of private litigation and it seems manifest that the judicial establishment is neither equipped in the limited nature of any judgment it can pronounce nor prepared to lay down and implement an effective policy for the elimination of air pollution. This is an area beyond the circumference of one private lawsuit. It is a direct responsibility for government and should not thus be undertaken as an incident to solving a dispute between property owners and a single cement plant...": *Id.* at 871.

(99) To this effect, see, e.g., Burgers, *supra* note 15, at 73.

significant among their activities, is monitoring states' compliance with international environmental obligations.(100)

States, in general, have shown a disposition towards accepting NGOs as partners in international environmental protection efforts.(101) These patterns of cooperation need to be strengthened and further refined. This could be achieved through procedural steps, such as the formal granting of access to decision-making bodies, etc.(102) Moreover, the prospect of a post-UNCED global environmental authority, such as a Commission on Sustainable Development,(103) which would assume the monitoring and review of national policies as to their consistency with international guidelines on "sustainability", diminishes significantly the case for a seperate human rights-based environmental review process. While to date the parameters of these UNCED proposals remain vague, it is entirely conceivable that, apart from states, NGOs and others, possibly also individuals, might be granted standing to make representations before such a Commission.(104) In such a case, because they would focus on narrowly defined issues, claims by individuals would be qualitatively different from any generic environmental human rights claims. As a matter-of-fact, an international system of environmental supervision of his kind would resemble closely what has proved to be a politically acceptable, because workable, approach to protecting collective environmental interests domestically.

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(100) See Handl, *supra* note 73, at 16-19; Sachariew, "Promoting Compliance with International Environmental Standards: Some Reflections on Monitoring and Reporting Systems", 2 *Yb.Int'l Env.L.* ___ (1991).; and Wirth, "Legitimacy, Accountability, and Partnership: A Model for Advocacy on Third World Environmental Issues", 100 *Yale L.J.* 2645 (1991). On the role of NGOs in the Latin American context, see, e.g., F. Tudela, *Hacia un nuevo pacto internacional para el desarrollo sustenable: Perspectivas de América Latina y el Caribe*, 8-11 (Banco Interamericano de Desarrollo, 1992).

(101) See, for example, the recent statement on NGOs in the Document of the Moscow Meeting of the Conference on the Human Dimension of the CSCE (para.43), in 30 *ILM* 1670, at 1690-91 (1991); Rules 76-77 — on consultations with NGOs and representation of these organizations — of the Rules of Procedure of the African Charter on Human and Peoples' Rights, *text in* 9 *Human Rights L.J.* 333, at 342 (1988). Admittedly, attempts at gaining formal international recognition of the role of NGOs, may have been set back recently in that the present version of the Rio Declaration, *supra* note 9, dropped an earlier version's explicit reference to the role of NGOs in ensuring sustainable environmental management.

(102) See, generally, Sands, "The Environment, Community and International Law", 30 *Harvard Int'l L.J.* 393, at 412-17 (1989); and "The Role of NGOs in the Effectiveness of International Environmental Law", in S. Bilderbeek, *supra* note 96, at 157-183.

(103) See, e.g., *Elements for Chapter V of Agenda 21: Institutional Arrangements, Draft Proposal prepared by the Issue Coordinator Ambasassador Razali Ismail (Malaysia), for Working Group III*, Preparatory Committee for the United Nations Conference on Environment and Development, Fourth Sess., New York, 2 March-3 April 1992, Working Group III, Agenda Item 4, U.N. Doc. A/CONF.151/PC/WG.III/CRP.3, 4-5, 23 March 1992.

(104) See *id.* at 4, para.13 (d), which envisages that the Commission would "receive relevant feedback from competent non-governmental organizations..."

In conclusion, the proposal of a generic environmental human right, to the extent that it is driven by a desire to "open up" the international environmental decision-making process, or to ensure better monitoring and supervision of states' environmentally sensitive activities at home, diverts attention from the task of building upon already existing structures and mechanisms or institutionalizing a cross-sectoral global environmental review mechanism; it would result in duplicative efforts without ever coming close to bringing about the same environmental benefits as would, for example, efforts spent on enhancing the formal status of NGOs within existing fora and processes, or on establishing a global environmental review process.

(ii) The Adequacy of Human Rights Decision-Making Bodies

There is a second, independent consideration related to the nature of the interest involved, that militates against conceptualizing environmental rights from a generic human rights viewpoint, namely the possibility that its implementation could overtax any international human rights body likely to face a generic environmental right-based complaint.

On the domestic level, specific environmental policy-making tends to be delegated to special technical bodies, given the intrinsic complexity of environmental issues. For example in the United States, basic outlines of environmental policy might be set by the legislature while detailed implementing regulations might be entrusted to administrative agencies which, in carrying out this mandate, enjoy wide discretion not subject to judicial review.(105) A similar functional specialization appears to be evolving on the international plane: states increasingly resort to environmental framework conventions and implementing protocols, delegating significant operational decisions to the respective conference of the parties, etc.(106) Fact-finding, the application and, even adaptation, of legal standards, as well as dispute settlement functions become internalized within the regime.(107)

In short, there is general recognition that in the field of environmental protection, decision-making — except as it regards basic policy parameters — is best entrusted to specialized or technical fora — the administrative agencies, domestically, the conferences of the parties, as repositories of specialized

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(105) See *Chevron, USA, Inc. v. Natural Resources Defense Council, Inc.* 467 U.S. 837, at 843-44 (1984).

(106) For a discussion, see, *e.g.*, Handl, *supra* note 73, at 5-7.

(107) See, e.g., Gehring, "International Environmental Regimes: Dynamic Sectoral Legal Systems", 1 *Yb.Int'l Env.L.* 35 (1990).

knowledge, in the case of international environmental regimes.[108] By contrast, the generic environmental human right proposal would presumably imply that alleged violations be dealt with in international human rights fora, few, if any of which might be able to discharge efficiently the task of deciding whether a human right based on the generic entitlement has been violated or not.

3. The Appropriateness of the "Human Rights" Label

Apart from the previously noted undesirability of overextending the "human rights" label and the resulting devaluation of the legal-political signalling function of human rights designations in general,[109] there are a couple additional reasons for why the use of the notion "environmental human rights" is problematical.

Firstly, the term epitomizes a conceptualization of environmental protection objectives as part of the human rights agenda. This in turn fosters an anthropocentric view of the environment which offers no guarantee against global environmental degradation and instability. For a human rights-based approach to the environment — even one that reflects sensitivity to intergenerational concerns — may well be strictly instrumentalist in the sense of subordinating all aspects of nature to the human enterprise.[110] Besides, the very label of "human rights" connotes "species chauvinism",[111] no matter how enlightened the underlying definition of the "human right". The legitimacy of, indeed the moral obligation to espouse, a more discriminating environmental point-of-view, i.e., one that recognizes the intrinsic merit of protecting nature for nature's sake, has not only been endorsed in the literature,[112] but has also found express recognition in several international legal documents.[113]

Secondly, in the past the use of the human rights label was, at least to some extent, inspired by the need to highlight "unsystematic" entitlements in an interstate legal system. As individuals, as well as other actors, increasingly come into their own rights, the very nature of the "international" legal system is undergoing change.

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(108) See id. at 38-42; and cf. Sachariew, *supra* note 100.

(109) See *supra* TAN 83.

(110) See, e.g., Handl, "Remarks" *in Contemporary International Law Issues: Sharing Pan-European and American Perspectives, Proceedings of the Joint ASIL/NVIR Symposium, July* 4-6, 1991, 41-42 (1992).

(111) See D'Amato & Chopra, "Whales Their Emerging Right to Life", 85 *AJIL* 21, at 22 (1991).

(112) See, *e.g.*, C. Stone, *Earth and Other Ethics: The Case for Moral Pluralism* (1987); and D'Amato & Chopra, *supra* note 111. Cf. also Shelton, *supra* note 2, at 109.

(113) For example, the World Charter for Nature stipulates that "[e]very form of life is unique, warranting respect *regardless of its worth to man*": GA res. 37/7, U.N. Doc. GAOR, 37th Sess., Supp.51 (A/37/51) 31. Emphasis added.

Thus individual and group entitlements, such as those of indigenous peoples,(114) are an increasingly common phenomenon of "international law".(115) The "human rights" designation, therefore, should not be used indiscriminately to mark any and all instances and forms of such novel empowerment of individuals. Indeed, if we are experiencing a general reversal of the mediate position of individuals in what for the lack of a better word we continue to call "international law,"(116) it might be important to distinguish between state and group or collective rights as well as individual rights,(117) not all of which are or will be "human rights" in the narrow sense, i.e., fundamental rights of individuals.(118)

C. Informational and Participatory Rights

Internationally guaranteed, specific environmental rights of individuals, such as informational and participatory rights can be understood as a refinement of established political or civil human rights or as novel human rights. Perhaps they should be called "individual rights", plain and simple. Whatever the terminology,

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(114) See, e.g., the Convention Concerning Indigenous and Tribal Peoples in Independendent Countries of 1989, *text in* 28 *ILM* 1384 (1989). For further references see J. Crawford, ed., supra note 17, at 178-212.

(115) See, e.g. the reference to "indigenous people" in Principle 21 of the Rio Declaration , *supra* note 9. See, generally, J. Crawford, ed., supra note 17; Barsh, "Indigenous Peoples: An Emerging Object of International Law", 80 *AJIL* 369 (1986); and Torres, "The Rights of Indigenous Populations: The Emerging International Norm", 16 *Yale J.Int'l L.* 127 (1991).

(116) These new unsystematic rights may well signal a process of a return to the pre-19th century Blackstonian, the then traditional notion of the "law of nations", i.e. *ius gentium* ("a generalized system of municipal law") vs. "international law," or *ius inter gentes* — the statist conception of international law. Note that a classic definition of"ius gentium" is "a system of rules, deducible by natural reason, and established by universal consent among the civilized inhabitants of the world, in order to decide all disputes....in that intercourse that must frequently occur between two or more independent stes, and the individuals belonging to each:" W. Blackstone, *Commentaries on the Laws of England* 67 (1765-1769, University of Chicago ed. 1979), quoted in Janis, "Jeremy Bentham and the Fashioning of 'International Law'", 78 *AJIL* 405, at 407 (1984). *See also* Parry, "Some Considerations Upon the Protection of Individuals in International Law", 90 *RdC* 653, at 698 (1956). Bentham deliberately changed Blackstone's fundamental (and correct) observation that the "law of nations" applied to individuals as well as states. See, e.g., Janis, *supra*, at 405.

(117) See also Galenkamp, *supra* note 1, at 295-96.

(118) This is not to suggest the existence of a hierarchy of human rights in present international law. Prof. Meron's critical comments in this respect are well taken: See Meron, *supra* note 1, at 7-8. Rather the use of the term "fundamental" rights as advocated here, is reserved for those positive human rights that conceptually have, as, for example, van Boven implies, a natural law foundation. See van Boven, "Dinstinguishing Criteria for Human Rights", in K. Vasak & P. Alston, eds., *The International Dimensions of Human Rights* (vol.1) 43, at 44 (1982). Without pretending to suggest criteria to determine which rights might fall into which category, it can argued that international human rights law is likely to evolve towards the an eventual differentiation — with clear normative implications — between fundamental and other individual/human rights.

these rights represent the pivot in a trilateral relationship of individual/human rights, democracy and environmental protection.(119) As such they warrant our unreserved endorsement as internationally protected rights: their normative reach is well defined, their claim to potential universal validity believable.

It is a truism that environmental degradation, and in particular non-sustainable development practices, constitute a social problem, whose resolution requires the cooperation of society at large. It cannot be resolved by governmental *fiat* but instead presupposes broad public participation, the realization, at least to a substantial degree, of an open society. Citizens must have access to pertinent environmental information as well as to relevant environmental decision-making fora.

The various UNCED preparatory texts call for recognition of such informational and participatory rights of the public in the final Conference documents.(120) So does the present version of the Rio Declaration.(121) International public policy on this issue has been authoritatively defined as, for example, in General Assembly resolution 42/186,(122) or Article 23 of the World Charter for Nature.(123) All these documents signal recognition in principle of the fundamental importance of extending participatory democracy to local and national environmental decision-making processes to ensure success at protecting the global ecological system as a whole.

In many countries citizens, indeed any individual as well as interest group irrespective of nationality, enjoy unrestricted access to public decision-making processes related to the environment. Similarly, as regards access to environmental information — at least to the extent such information is in the possession of public authorities — is already available as a matter of right in many of the same countries. By the end of 1992, freedom of access to information on the environment, should become a legal reality throughout the European Community.(124)

On the international plane itself, the traditional principal focus on ensuring "equal right of access" of foreign residents to domestic decision-making processes

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(119) On this interrelationship, see, e.g., Fields & Narr, *supra* note 58, at 12.

(120) See, e.g., the 1990 Bergen Ministerial Declaration on Sustainable Development in the ECE Region, para.16(g), reprinted *in 1 Yb. Int'l Env.L.* 430 (1990).

(121) See Principle 10, *supra* note 9.

(122) See para. (h) of General Assembly resolution 42/186 of December 11, 1987, relating to the *Environmental Perspective to the Year 2000 and Beyond.*

(123) "All persons...shall have the opportunity to particpiate, individually or with others, in the formalution of decisions of direct concern to their environment...": see *supra* note 113.

(124) This will be largely due to the 1990 EC Council Directive that will have to be implemented by that time. See EC Council Directive on Free Access to Environmental Information, EC *O.J.* 1990 No L 158/56, 23.6.1990.

and to information held by public authorities,[125] has shifted to guaranteeing these rights vis-à-vis domestic and foreign residents alike.[126] Thus far, this development appears sectorally limited.[127]

However, there is no denying the emergence of at least regional community expectations to the effect that such access amounts to an internationally guaranteed right,[128] even though, now and then, there occur unexpected set-backs in the legal development towards realization of these "procedural rights" of individuals.[129]

Human rights and environmental lawyers ought to strive to fully secure these rights regionally and to work towards their recognition as globally invocable entitlements. This ought to be a matter of priority. For it is these individual rights as well as other group rights, such as those of indigenous peoples, that are located at a crucial juncture of environmental protection and respect for human dignity. It is the securement of these rights that international lawyers ought to direct their efforts to, because attention paid to these entitlements are likely to produce the biggest environmental (and human rights) advances in the shortest period of time.

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(125) For a recent detailed analysis, see G. Handl, *Grenzüberschreitendes nukleares Risiko und volkerrechtlicher Schutzanspruch* 87-112 (1992).

(126) For example, a 1989 OECD Council Decision commits member countries to ensure local hazard communication: the public must be provided with and have access to pertinent information about local industrial hazards. The Decision also obliges member states to ensure the affected public of an opportunity to participate in decisions concerning hazardous installations and the development of community emergency preparedness plans. See Decision-Recommendation of the Council concerning Provision of Information in Decision-Making Processes Related to the Prevention of, and Response to, Accidents Involving Hazardous Substances, OECD Doc. C(88)85(Final), 2, paragraph 1.

(127) An example in point is the Council of Europe draft Convention on Civil Liability for Damage Resulting from Activities Dangerous to the Environment (establishing "any natural or legal person['s]" right of access to environmental information). See Articles 15-16 of the draft Convention, reprinted *in 21 Env.Policy & L.* 270 (1991).

(128) See also Shelton, *supra* note 2, at 117-120. See generally, Steiner, "Political Participation as a Human Right", 1 *Harvard Human Rights Yb.* 77 (1988).

(129) A case in point is a relatively recent decision by the Austrian Supreme Administrative Court, dated January 29, 1991, Zl. 90/07/0174, in which the Court denied standing to the foreign plaintiff on the grounds that, notwithstanding the allegation of transboundary environmental harm, the applicable Austrian statute did not apply extraterritorially in the sense of creating such a procedural entitlement.

III. Conclusions

Undoubtedly, international legal norms for the protection of the environment evolved initially as a vindication of states' sovereignty-based mutual rights and obligations. International law has developed beyond this stage. Today, we have some internationally, although at this stage probably only regionally, guaranteed individual rights bearing on the environment. Whether or not these rights constitute "human rights" proper, they should be enacted as global standards and further strengthened.

There exists presently no generic "human right to a clean or healthy environment". Nor should we postulate such a normative concept *de lege ferenda*. Although the proposal for such right might have a certain attractiveness in that it may (temporarily) give a high profile to environmental issues(130), in the end, it would amount to little more than legal window-dressing. The notion that a generic environmental human right — as against narrowly defined, sectoral individual rights — could be used as a lever by which to accelerate the international environmental legal agenda is misleading. It grossly underestimates the difficulties involved in operationalizing such a normative concept. Moreover, it entails significant costs of its own in terms of debasing the human rights currency and in diverting attention away from the pursuit of more promising avenues to solving pressing environmental problems.(131) In short, it is unlikely to promote realistic environmental or human rights objectives. Realism calls instead for a more modest, yet focussed campaign which aims at gaining general international recognition of specific or well-defined environmental rights and at strengthening or building upon existing international environmental review procedures.

As global human rights and environmental regimes evolve in parallel fashion and indeed have come to overlap in many — sometimes contradictory — ways, there is a need for coordination between two systems. But such coordination must be inspired by a clear understanding as to the respective approaches' suitability with regard to vindicating the environmental interests at stake, i.e., as to which approach can accomplish what objectives more effectively.

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(130) It is true, of course, as Lynton Caldwell points out, that "rethoric is often a necessary precursor of action". See Caldwell, "The Case for an Amendment to the Constitution of the United States for Protection of the Environment", 1 *Duke Env. L. & Policy Forum* 1, at 6 (1991). However, the point being made in this paper is that, at present, the costs of such rethoric, *i.e.*, the postulation of a generic human right to the environment, outweigh the benefits it might carry in terms of dramatizing the existence of serious threats to environmental stability and the need for remedial countermeasures.

(131) These and other points have been made forcefully early on in the debate about the growth of "human rights" norms by Bilder, *supra* note 18, at 205.

PARTE / PART III

INFORMES TEMÁTICOS / THEMATIC REPORTS

Informes Presentados en el Seminario / Reports Presented at the Seminar:

Protection of the Natural Environment in Time of Conflict: Overview of the State of International Humanitarian Law and Position of the International Committee of the Red Cross (ICRC)

GÉRARD PEYTRIGNET

1. *Foreword*

Let me thank, first of all, the Inter-American Institute of Human Rights (IIDH), and particularly Professor Cançado Trindade, for having considered the inclusion, within the program of this Seminar on Human Rights and Environmental Law, of the topic of environmental protection in time of armed conflicts, and, more concretely, the contribution of International Humanitarian Law (IHL) to the safeguarding of natural environment in war situations.

In my capacity of representative of the International Committee of the Red Cross (ICRC) for Brazil, I am glad to have the opportunity to present, although in a summarized way, a few points related to the subject. For that purpose, I shall found this exposé on the content of a Memorandum, officially communicated to the 3rd Preparatory Committee of the United Nations Conference on Environment and Development (UNCED) that took place in Geneva in August 1991, document that was aimed at giving an overview of the present state of International Humanitarian Law regarding the protection of environment, as well as presenting the position of the International Committee of the Red Cross on this particular matter.

And for those interested in deepening the subject, I shall gladly hand over a few studies that give a more comprehensive look at this theme.

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2. *Background*

Ever since its inception, International Humanitarian Law (IHL) has set limits on the right of belligerents to cause suffering and injury to people and to wreak destruction on objects, including the natural environment.

The Declaration of St. Petersburg of 1868 already expressed this idea in the following terms:

"The only legitimate object which States should endeavour to accomplish during the war is to weaken the military forces of the enemy...".

On its side, Article 35 (I) of Protocol I to Geneva Conventions, about which we shall talk ahead, gives expression to this fundamental rule as follows:

"In any armed conflict, the right of the Parties to the conflict to choose methods or means of warfare is not unlimited".

The concept of proportionality also sets important limits on warfare: the only acts of war permitted are those that are proportional to the lawful objective of a military operation and actually necessary to achieve that objective.

These fundamental rules are now part of customary international law, which is binding on the whole community of nations. They are also applicable to the protection of the environment against acts of warfare.

The rules of IHL have been drawn up to address the specific problems caused by warfare. As such they are applicable as soon as an armed conflict breaks out.

Let us point out that, in addition to the rules of law pertaining to warfare, general (peacetime) provisions on the protection of the environment may continue to be applicable. This holds true in particular for the relation between a belligerent State and third parties.

The following paragraphs will review the major international legal rules which are relevant to the protection of the environment in time of war.

3. *The Hague Convention Respecting the Laws and Customs of War on Land of 18 October 1907, With the Hague Regulation Annexed Thereto, and the Geneva Convention Relative to the Protection of Civilian Persons in Time of War, of 12 August 1949: the Protection of Property.*

In keeping with international law in general, IHL has been slow in recognizing that the environment requires protection by a set of specific rules of law.

Thus, the word "environment" does not appear in the Hague Regulations nor in the 1949 Geneva Conventions, and these treaties do not address specific environmental issues.

However, Article 23 (g) of the Hague Regulations states that is forbidden "to destroy or seize the enemy's property, unless such destruction or seizure be imperatively demanded by the necessities of war".

In the event of belligerent occupation, Article 55 of the Hague Regulations and Article 53 of the Fourth Geneva Convention set limits to the discretion of the "Occupying Power". The latter rule deserves to be quoted:

"Any destruction by the Occupying Power of real or personal property belonging individually or collectively to private persons, or to the State or to other public authorities, or to social or co-operative organizations, is prohibited, except where such destruction is rendered absolutely necessary by military operations".

Thus an Occupying Power that destroys, for example, industrial installations in an occupied territory, and in so doing causes damage to the environment, violates the Fourth Convention, if such destruction is not rendered "absolutely" necessary by military considerations; if such destruction is "extensive", the act becomes a grave breach of that same Convention (Article 147), i.e., a "war crime".

Obviously, the limits discussed in this section do not relate to environmental issues as such, but they do protect the environment by prohibiting the destruction of property.

4. *Protocol (I) Additional to the Geneva Convention of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflict: the Protection of Environment as Such.*

Protocol I includes two provisions which deal directly with the danger that modern warfare represents for the environment. They protect the environment as such, although in relation to human beings who are the principal concern of IHL.

The rules are Articles 35 (3) and 55:

Article 35 - Basic rules

"It is prohibited to employ methods or means of warfare which are intended, or may be expected to cause widespread, long-term and severe damage to the natural environment".

Article 55 - Protection of the natural environment

1. "Care shall be taken in warfare to protect the natural environment against widespread, long-term and severe damage. This protection includes a prohibition of the use of methods or means of warfare which are intended or may be expected to cause such damage to the natural environment and thereby to prejudice the health or survival of the population".

2. "Attacks against the natural environment by way of reprisals are prohibited".

Therefore, we can see that article 35 sets out the general rule applicable to all acts of warfare, whereas article 55 is intended to protect the civilian population from the effects of warfare on the environment.

In both cases the following are prohibited: (a) attacks on the environment as such; and (b) making use of the environment as a instrument of warfare.

Articles 35 (3) and 55 prohibit only such damage to the environment as if "widespread, long-term and severe", thereby making it clear that not all damage to the environment is outlawed. Indeed, in warfare damage to the environment is unavoidable. The point at issue, therefore, is where to set the threshold?

Moreover, the question as to what constitutes "widespread, long-term and severe" damage and what is "acceptable damage" to the environment is open to interpretation. Such discussion has to take the whole context into account, and will vary with changes in expectations with régard to the general need to protect the environment. Of course, the "travaux préparatoires" of the Diplomatic Conference have also to be taken into consideration, where relevant.

Besides Articles 35 (3) and 55, other provisions of Protocol I touch incidentally on the protection of the environment in armed conflict. In particular, Article 56 deals with the danger to the environment resulting from the destruction of dams, dikes or nuclear power stations, under the title "Protection of objects indispensable to the survival of the civilian population". Article 54 prohibits, under certain conditions, the destruction of, among others, agricultural areas or irrigation works.

Finally, Article 36 obliges the Parties to Protocol I to determine whether the use of a new weapon about to be developed, tested or acquired would be compatible with International Law; and of course, the rules concerning the protection of the environment are part of that international standard.

In conclusion, the provisions of Protocol I, in particular Articles 35 (3) and 55, do set up, from our point of view, a substantial legal bulwark against destruction of the environment in wartime.

Protocol I has now been accepted by 103 States. Its provisions concerning the protection of the environment are therefore binding international law for the vast majority of States, but not yet for all of them. Let us point out, nevertheless, that the main protagonists of the Gulf War were not bound by the provisions of Protocol I.

5. *Other International Instruments*

A number of other international instruments deal with the protection of the environment in time of war. Without going into details, the following treaties are worthy of mention:

- Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare, of 17 June 1925.

- Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction, of April 1972.

- Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modifications Techniques (ENMOD), of 10 December 1976.

- Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons which May be Deemed to be Excessively Injurious or to Have Indiscriminate Effects, of 10 October 1980.

Furthermore, all international rules which limit the development, production, testing or use of weapons of mass destruction make a significant contribution to the same objective. And the ongoing negotiations with a view to strengthening the ban on chemical weapons are also to be mentioned.

6. *The Special Case of Non-International Armed Conflicts*

The international law that protects victims of non-international armed conflict is less well-developped than IHL governing international armed conflict.

Article 3 common to the four 1949 Geneva Conventions does not say anything about protecting the environment from attack in civil war since it only addresses humanitarian issues in the strictest sense.

Whereas Protocol II additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts, contains no provisions directly concerning the environment. However, article 14, on the "protection of objects indispensable to the survival of the civilian population", has a direct impact on warfare and the environment, with its prohibition of attacks on agricultural areas, irrigation works, etc.

There is consequently no doubt that IHL provisions concerning the protection of environment in internal conflicts deserve to be strengthened.

7. *The Question of Monitoring*

As is the case for any other rule of law, compliance with international provisions relating to the protection of the environment in time of war must be assured. In the event of non-compliance, action must be taken to establish the facts, to redress the wrong and to prevent the recurrence of such violations.

Among the various procedures set up by IHL to guarantee the implementation of its rules, three may be mentioned in this context.

7.1. *International Fact-Finding Commission*
(Protocol I, Article 90)

This Commission has the mandate, in the event of an alleged violation of IHL in the course of an international armed conflict, to ascertain the facts, and to offer its services to the parties concerned with a view to preventing further violations.

Obviously, the Fact-Finding Commission could render invaluable service should there be wartime damage to the environment.

The Commission's jurisdiction, however, depends on a special declaration of acceptance (Article 90.2), and, as of today, no more than 23 countries have accepted this optional procedure.

7.2. *Individual penal responsibility*

States Party to the Geneva Conventions and Protocols are bound to take all possible measures to ensure the proper discharge of their obligations in time of war. Among such measures, one of the more important is the adoption of appropriate national rules on penal sanctions.

Although causing widespread, long-term and severe damage to the environment as such is not a "grave breach" of Protocol I, such acts may be part of a "grave breach" of other provisions.

7.3. *Duties of all States Party to the Humanitarian Treaties*

Article I common to the Four Geneva Conventions and Protocol I stipulates that States Party are under the obligation "to ensure respect" for the said treaties. This underlines the shared responsibility or all Parties to the Conventions and Protocol I to make sure that humanitarian obligations are implemented by each and every State; and the duty to respect the environment in time of war is, of course, one of those obligations.

8. *Concluding Remarks and Future Prospects*

We have seen that modern International Humanitarian Law only addresses threats to the environment that are specific to warfare. In that particular context, the 1977 Protocols additional to the Geneva Conventions have made an important contribution to the strengthening of the international rules intended to protect the environment in time of armed conflict.

For that reason, ICRC urges all States that have not yet done so to ratify (or accede to) the two 1977 Protocols.

Furthermore, the true significance of the new law for the preservation of the natural environment in war has yet to be fully grasped. Thorough studies must be undertaken on the national and international levels, taking into account not only recent experiences with attacks on the environment but also the growing international concern for environmental protection. Practical steps must hence be worked out with a view to ensuring that all parties to an armed conflict comply with the new rules.

The drafting of a summary of the relevant provisions to remind military commanders of their obligations in this respect might be a first step in ensuring full implementation of the rules on the protection of the environment.

The ICRC, for its part, was intending to submit proposals to the 26th International Conference of the Red Cross and Red Crescent, to be held in Budapest/Hungary, in November 1991; with the postponement of the Conference, ICRC has decided to convene a meeting of international experts, scheduled for the 27th - 29th of March 1992 in Geneva, in order to make a comprehensive and updated balance on the whole subject.

The ICRC also trusts that the United Nations Conference on Environment and Development - Rio 92 - will give due consideration to the specific problem of damages to natural environment caused by armed conflicts.

Protection of the Environment and International Refugee Law(*)

ANTÔNIO AUGUSTO CANÇADO TRINDADE

1. Protection of Victims of Environmental Disasters under Refugeee Law

Some recent developments in international refugee law at regional level, in particular with regard to the current Central American crisis, are worthy of attention. In order to tackle the problem of massive flows of refugees in the Central American area, the U.N. High Commissioner for Refugees (UNHCR) deemed it "necessary to consider enlarging the concept of a refugee". To that effect it adopted criteria on the basis of the precedent of the 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa, Article 1(2) - adopted precisely to face a similar problem in Africa -, and of the doctrine upheld in reports of the Inter-American Commission of Human Rights(1). A resulting concept was reached at the UNHCR Colloquy of Cartagena de Indias of 1984(2), embodied in the document which came to be known as the *"Cartagena Declaration on Refugees"*.

Therein the definition or concept of a refugee recommended for use in the Central American region is one which

> "in addition to containing the elements of the 1951 Convention [Relating to the Status of Refugees] and the 1967 Protocol [Relating to the Status of Refugees], includes among refugees persons who have fled their country because their lives, safety or freedom have been threatened by generalized violence, foreign aggression, internal conflicts, massive

(*) The present text, which served as basis for one of the Author's interventions in the debates of the Inter-American Seminar on Human Rights and the Environment (Brasilia, 4-7 March 1992), forms part of a book currently in the course of preparation by the Author on "*Human Rights Protection and Environmental Protection: A Parallel*".

(1) UNHCR, *op. cit. infra* n. (3), p. 34.

(2) Attended by a group of experts, as well as governmental Delegates from Belize, Colombia, Costa Rica, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Panama and Venezuela; cf. *ibid.*, pp. 3-8.

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violation of human rights or other circumstances which have seriously disturbed public order"[3].

The situations above referred to, it can be assumed, are caused by man, or would in principle have to be caused by man, so as to be encompassed by the new, amplified, concept of a refugee recommended by the Cartagena Declaration. It can promptly be asked what does the expression "other circumstances" cover; would, or could, it also comprise, e.g., victims of [man-made] environmental changes or accidents? Before returning to this point, it should be added that the Cartagena Declaration was followed, and dwelt upon, by two other documents. The first one is the 1987 Report of a Group of Experts which met at the UNHCR headquarters in Geneva to examine possible solutions to the problems of Central American refugees.

The 1987 Report, after referring to the 1984 Cartagena Declaration as a regional expression of refugee law (which reflected international practice on the matter and could thus lead to the crystallization of a "regional custom"), warned that the refugee problem in Central America was inserted into a "wider context of *desplazamiento poblacional*"[4]. The Report *inter alia* referred to measures aiming at the *prevention* of causes which originated current massive flows of Central American refugees; those measures concerned the settlement of the conflicts and crisis in the region on the basis of the application of the principles of international law proclaimed in the U.N. Charter, the consolidation of the processes of democratization in the region, the respect for and observance of human rights (in particular those recognized in the 1969 American Convention on Human Rights), and the promotion of economic and social development in the region[5].

The second and more recent document is the one submitted by a Committee of Legal Experts to the International Conference on Central American Refugees (CIREFCA) in 1989[6], titled "Principles and Criteria for the Protection of and Assistance to Central American Refugees, Returnees and Displaced Persons in Latin America". The document was advanced as a general framework for assistance to the States concerned in their treatment of refugees, returnees and displaced persons in the Central American region.

The 1989 document, after recalling the "fundamental importance" of the Cartagena Declaration despite of its not being technically a legally binding

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(3) ACNUR/UNHCR, *Declaración de Cartagena/Cartagena Declaration* (Coloquio/Colloquy), Cartagena, ACNUR/Universidad de Cartagena, 1984, pp. 14 and 34.

(4) ACNUR/UNHCR, *Grupo de Consulta sobre Posibles Soluciones a los Problemas de los Refugiados Centroamericanos* - Informe (1987), Geneva, UNHCR, 25-27.05.1987, pp. 2-3.

(5) *Ibid.*, pp. 7-8.

(6) The Conference was held in Guatemala City on 29-30 May 1989. The document, prepared in January 1989, counted on comments submitted by the Governments concerned. Cf. UNHCR, *op. cit. infra* n. (7), p.1.

instrument[7], then provides an interpretation of the expanded concept of a refugee - passage above quoted - advanced by the 1984 Cartagena Declaration *(supra)*. According to the 1989 document, the expression "other circumstances which have seriously disturbed public order" ought to cover "the result of human actions and not of natural disasters". Moreover, "economic migrants" should not be confused with "victims of natural disasters"; these latter - the 1989 document adds - do not qualify as refugees, unless there occur "special circumstances" closely linked to the refugee definition[8].

Might it here not be added that a distinction should be born in mind between natural disasters and environmental disasters? The victims of "pure" natural disasters (e.g. volcanoes, lightning, earthquakes, hurricanes, tidal waves, etc.) would remain outside the scope of the 1984 Cartagena definition. But the victims of environmental disasters (caused by human error or negligence, e.g., nuclear disasters, international water pollution accidents, oil spills, forest fires, droughts as consequence of climatic change, etc.) could fall under the "other circumstances" provided for by the 1984 Cartagena definition *(supra)*, and thus benefit from refugee law protection. It could in this connection be argued that climatic change is not only a "natural disaster", or not a purely one, as it presents human intervention[9]; the victims of climatic changes (e.g., affecting the production of food) could thus arguably count on the protection envisaged herein.

Displaced persons in different circumstances constitute a category which requires careful attention and not seldom are in greater need of protection than the refugees who have left the country, - as admitted by the 1989 document itself[10]. There is, furthermore, a close link between the flows of refugees and human rights protection, as gross violations of human rights bring about flows - at times in a massive scale - of refugees[11], raising difficulties for the mechanisms of protection. The protection of refugees and displaced persons is thus to be properly coordinated with the mechanisms of human rights protection (at global and regional levels)[12]. And the emergence of human collectivities in need of special attention and

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(7) [UNHCR] document CIREFCA/89/9, 1989, p. 3 (English revised version).

(8) *Ibid.*, pp. 7-8.

(9) To environmental disasters there thus apply, besides the general duty of preventing them, the general duty of minimizing damage and providing emergency assistance, - comprising the obligations to notify promptly and to provide information, to develop contingency plans, and to cooperate in minimizing damage, - and the general duty of compensating for injuries from them. Cf. E. Brown Weiss, "Environmental Disasters in International Law", *Anuario Jurídico Interamericano* (1986) pp. 141-169; and cf. A. Kiss, "L'accident de Tchernobyl et ses conséquences au point de vue du Droit International", 32 *Annuaire français de Droit international* (1986) pp. 139-152.

(10) Cf. doc. *cit. supra* n. (7), p. 14.

(11) Cf. *ibid.*, p. 15.

(12) Cf. *ibid.*, p. 15.

protection - internationally displaced persons, internal displaced persons, returnees, so-called "economic migrants", etc. - give a new and wider dimension to international refugee law.

2. *The Inter-Temporal Dimension of International Refugee Law*

For the purposes of the present study, besides the possible assimilation of victims of environmental disasters to protected persons under refugee law, there is another point deserving of attention, and likewise unexplored to date: that of the intertemporal dimension of international refugee law. This dimension is always present, at distinct levels; for example, environmental disasters, though appearing as "immediate" - term phenomena, may affect people also in the long term. There may be victims of phenomena or accidents caused by man with long-term effects. Such long-term victims may well appear as displaced persons for the purpose of protection under international refugee law.

The temporal dimension is further manifest in the endeavours of *prevention* or *forecasting* of refugee flows. It is precisely the *threat* of likely violence that leads to movements of refugees; the time element is underlying the very notion of forced migrants, who leave home on perceiving a *threat* or probability of violence(13). In this connection, the expression "*early warning*", coined in the realm of environmental law, has lately been utilized also in the ambit of refugee law and human rights protection.

Thus, the U.N. Secretary-General himself has had occasion to stress the importance of providing early warning of developing situations concerning possible refugee outflows. The special rapporteur of the U.N. Commission on Human Rights on the question of massive exoduses recommended in 1981 the establishment of an early-warning system on the basis of impartial information-gathering so as to forewarn potential exoduses and to consider preventive action before the start of a mass movement. In U.N. debates on the matter, the possibility was raised of elaborating guidelines of a preventive nature to avert new flows of refugees and to cope with problems raised by mass flows of refugees(14). In that same year the U.N. General Assembly established a Group of Governmental Experts on International Cooperation to Avert New Flows of Refugees, which reported on the matter in 1986. The need has been stressed of rendering the U.N. system "more effective in anticipating major humanitarian problems, particularly those which could lead to

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(13) L. Gordenker, *Refugees in International Politics*, London/Sydney, Croom Helm, 1987, pp. 170 and 179, and cf. pp. 168-173 and 176-180.

(14) B.G. Ramcharan, *Humanitarian Good Offices in International Law*, The Hague, Nijhoff, 1983, pp. 141-149.

mass movements of populations"[15], using the U.N. Centre for Human Rights as the focal point in developing U.N. mechanisms to that end.

Endeavours to prevent floods of refugees were in fact undertaken, on the basis of an agreement signed in 1979, by Vietnam and the UNHCR[16]. In another case, in a resolution adopted in 1985, the U.N. Sub-Commission on Prevention of Discrimination and Protection of Minorities alerted the U.N. Commission on Human Rights that the *human rights situation in Pakistan* was one with "great potential to cause a mass exodus, especially of members of the Ahmadi community"[17].

Early-warning, to cope with the problems raised by forced migrants - especially when in large numbers and in conditions of distress, - comprises the gathering of information and projections from that information, so as to enable "a prediction of future disaster"[18]. That information can further be used for "the framing of policies and programmes to cope with forced migration"; the employment of early-warning can be directed largely to two main situations, namely, to "the prevention or containment of an outflow of people" or, when that is no longer possible (when migration has already begun), to the amelioration of the situation[19]. In either case, early-warning would be directed at inter-governmental organisations and relevant voluntary groups concerned so as to take the necessary (preventive) measures and to prepare assistance[20].

In 1984 the U.N. Centre for Human Rights suggested the following criteria as a basis for the assessment of the gathered information, so as to identify situations which could lead to massive movements of people:

> "(a) a large number of people are affected; (b) a serious likelihood exists that a mass movement of people might take place; and (c) the movement taking place might extend across international borders"[21].

Situations of the kind, affecting human collectivities, call for compliance with obligations similar to those propounded for treating victims, or potential victims, of

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(15) B.G. Ramcharan, "Early-Warning at the United Nations: the First Experiment", 1 *International Journal of Refugee Law* (1989) n° 3, p. 382, and cf. pp. 379-382.

(16) For a criticism of the "preventive programmes" of the so-called "orderly departure system" and the "moratorium on departures" in the *Vietnam case* (1979-1984), cf. L. Gordenker, *op. cit. supra* n. (13), pp. 181-183.

(17) *Cit. in.* B. G. Ramcharan, *op. cit. supra* n. (15), p. 384.

(18) L. Gordenker, *op. cit. supra* n. (13), pp. 174-175.

(19) *Ibid.*, p. 174.

(20) *Ibid.*, p. 174.

(21) *Cit. in.* B.G. Ramcharan, *op. cit. supra* n. (15), p. 383.

environmental disasters (e.g., prevention, prompt information, minimization of distress, contingency plans and emergency assistance, compensation)[22].

Last but not least, we could not conclude these considerations without a word of warning: even though most governments still do not recognize environmental decline (e.g., land degradation, toxic wastes, "unnatural" disasters, expected sea-level rise by global warming) as a cause of refugee flows, current figures indicate that about 10 million people represent today "environmental refugees", a total which "rivals that of the officially recognized refugees and is sure to overtake this group in the coming decades"[23]. Land degradation remains so far the "single most important cause of environmental refugees" (mostly in Africa), and these latter have become "the single largest class of displaced persons in the world"; those who have been permanently displaced constitute "both the largest and the fastest growing" category of environmental refugees[24]. It should be kept in mind that the halting of environmental refugee flows appears ultimately as a question of environmental management[25]. This dramatic situation lies at the confluence of international refugee law and environmental law, and discloses the interactions between human and environmental conditions and the urgent need to improve them altogether.

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(22) Cf. *supra*, note (9). Cf. further, in particular, e.g., the two 1986 IAEA Conventions on Nuclear Accidents (Early Notification, and Assistance); texts *in* 25 *International Legal Materials* (1986) n° 6, pp. 1369-1386.

(23) UNHCR internal working-paper, based on J. Jacobson, "Environmental Refugees: A Yardstick of Habitability" (Worldwatch paper 86, Nov. 1988), and on E. El-Hinnawi, "Environmental Refugees" (UNEP, 1985), pp. 1-2 (mimeographed, restricted circulation).

(24) *Ibid.*, p. 5.

(25) *Ibid.*, p. 3. - For more recent studies on the matter, cf. Natural Heritage Institute, *Field Staff Report Series on Environmental Refugees*, 1990-1991; the Series is so far composed of five monographs, on environmental refugees in South Asia, Brazil, Haiti and Sub-Saharan Africa.

Derechos Humanos y Globalidad: Notas para una Perspectiva Holística y Sistémica

JAIME ORDÓÑEZ

1. Una perspectiva sistémica de la sociedad política y del ámbito de los derechos humanos

Las relaciones entre hombre y sociedad son el objeto, tanto de la axiología como de la normativa jurídica. Estas relaciones son cambiantes, evolucionan y trascienden con mucho las simples conexiones entre individuo-comunidad; involucran, también, un complejo sistema de interrelaciones entre el individuo, la sociedad política, la comunidad global de habitantes de la nación(1) y, además, el entorno físico donde se desarrollan los procesos de la globalidad de la sociedad política.

En este sentido, cualquier análisis normativo - no sólo en el campo de los derechos humanos, sino dentro de la teoría del derecho en sentido genérico - sólo puede realizarse a partir del análisis de lo jurídico como una *instancia cultural de regulación* dentro de un mucho más amplio marco de factores que interactúan, los cuales - en su complejidad - definen la dinámica de la sociedad política y sus objetivos.

Resulta sencillo explicar la evolución histórica de este fenómeno. La teoría de los derechos humanos establece, esencialmente, un sistema de derechos y obligaciones que persiguen una serie de objetivos que han ido cambiando y enriqueciéndose con el tiempo. Si bien la teleología decimonónica de los derechos humanos - la cual resultó vigente hasta la mitad de este siglo - tendia a reducir los objetivos sociales, exclusivamente, a la conquista y preservación de los valores *libertad* y *seguridad jurídica*, los progresivos y acelerados cambios en el pensamiento político (y, luego, en sus instancias jurídicas como el derecho

(1) Esta visión integral de la comunidad política y social ha sido especialmente abordada por D.D. Raphael en *Problems of Political Philosophy*, The Macmillan Press, London, 1970.

constitucional) rápidamente incorporaron nuevos objetivos axiológicos al movimiento de los derechos humanos.

Paulatinamente, nuevos valores como *bienestar económico, equidad social, acceso al trabajo, satisfacción de necesidades básicas en lo económico, cultural y educativo*, entraron a formar parte fundamental de la nueva gama de objetivos - valor incorporados a la evolución de la teoría de los derechos humanos y a los distintos instrumentos jurídicos internacionales y nacionales ocupados de su defensa.(2)

Esta adición de nuevos valores transformó algunos criterios sustantivos y metodológicos de la disciplina: la relación concausal entre los valores de defensa de la libertad y los nuevos valores, que llamaríamos de la equidad social, provocó nuevos y sugerentes desarrollos doctrinarios, tendientes al mutuo condicionamiento entre ambos tipos de derechos humanos, así como de los objetivos jurídicos, procedimentales y políticos para alcanzarlos.

Esta visión sistémica e interactuante de los derechos civiles y políticos en relación a los derechos económicos, sociales y culturales es actualmente considerada por un sector importante de los tratadistas(3) y mucho más ventajosa que la llamada teoría generacional, por razones que no desarrollaremos aquí.(4)

En los últimos diez años, sin embargo, un nuevo elemento se ha incorporado a esta red sistémica de valores que forman los derechos humanos, trastocándo ostensiblemente este sistema de interrelaciones de principios, derechos y obligaciones. Esta nuevo elemento constitutivo del sistema de derechos humanos parece tener dos variables fundamentales: en primer término, la aparición del objetivo *calidad de vida* como un macro punto de referencia capaz de englobar los dos anteriores núcleos de valores (libertad y equidad) y, además, con la absoluta

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(2) Véase, para una visión integral de la evolución doctrinaria y de instrumentos internacionales, Antonio A. Cançado Trindade, *A questão da implementação internacional dos direitos econômicos, sociais e culturais: evolução e tendências atuais*, en Revista del Instituto Interamericano de Derechos Humanos, No. 9, Enero-Junio 1989, San José, Costa Rica. El Profesor Cançado Trindade refiere las obras fundamentales en la materia.

(3) Véase, entre otros, G. Peces-Barba, "Reflections on Economic, Social and Cultural Rights", 2 *Human Rights Law Journal* (1981), p. 288 y ss.; H. Gros Espiell, *Los derechos económicos, sociales y culturales en el sistema interamericano*, San José, Libro-Libre, 1986. Similares criterios de interdependencia e interacción de valores se encuentran referidos en el llamado derecho al desarrollo. Al respecto, véase A. A. Cançado Trindade, "Legal dimensions of the right to development: some conceptual aspects", en *Revista del Instituto Interamericano de Derechos Humanos*, No. 13, Enero-Junio, 1991.

(4) Al respecto, puede verse Jaime Ordóñez y Enrique Vasquez (Compiladores), *Derechos Económicos y Desarrollo en América Latina*, Textos para el Debate, Instituto Interamericano de Derechos Humanos, San José, Costa Rica, Servicio Editorial IIDH, 1991. Asimismo, Enrique Vasquez, "Hacia una nueva concepción de los Derechos Humanos", en *Revista del Instituto Interamericano de Derechos Humanos*, San José, Costa Rica, Servicio Editorial IIDH, enero-junio, 1987.

novedad de incorporar nuevos elementos tales habitat humano, medio ecológico, relaciones entre producción y medio ambiente y cooperación internacional como factores fundamentales en la conformación en la sociedad del futuro.(5)

En segundo lugar, lo que podría llamarse *el discurso de la globalidad*(6), según el cual el ámbito de los fenómenos sociales (sean económicos, jurídicos, políticos, etcétera) ha rebasado casi totalmente el contexto del estado nacional y de que, en muchos respectos, los próximos años podrán ser entendidos sólo unicamente con referencia a una sociedad global (el *Global Village* de Mc Luhan). Los más pequeños cambios en un extremo del globo afectan sensiblemente zonas opuestas, creándose una sensible y compleja red de interrelaciones tanto en lo económico, político, militar, industrial y el impacto de todas estas variables en la naturaleza. Dentro de este criterio, no sólo las reformulaciones sustantivas de los valores de libertad (derechos civiles y políticos) y equidad (derechos económicos, sociales y culturales) sino, además, sus mecanismos de protección e instituciones, podrán ser viables únicamente referidos a estas nuevas variables de *calidad de vida y globalidad.*

En efecto, si durante los últimos años se insistió en el tema de la mutua interrelación y dependencia dentre los derechos económicos, sociales y culturales (defendiéndose la tésis de los sistemas interactuantes y complementarios), hoy parece evidente que nuevos elementos - precisamente *globalidad, calidad de vida e integración* - resultan absolutamente necesarios para el funcionamento del sistema de valores, toda vez que nuevos elementos intervienen dentro del complejo juego de dependencias e interacciones a la vez que el ámbito de ejercicio y aplicación se convierte en global o internacional. En otras palabras, podría decirse que nuevos elementos se incorporaron al juego sistémico de interrelaciones e interacción entre valores. El juego se ha vuelto más complejo, al sumarse nuevos elementos, a la vez que el ámbito de acción es más amplio: trascendió los estados nacionales y se ha vuelto global.

2. *La importancia del pensamiento holístico en la disciplina: globalidad y medio ambiente*

Este replanteamiento de los factores obliga hoy a la doctrina a una concepción holística de los derechos humanos y de los distintos factores (tanto económicos, políticos) como los referidos a la infraestrutura social y al contexto socio-humano y natural dentro del cual se enmarca la sociedad política. En este sentido, hoy resulta bastante claro que, si bien es imposible la realización de los

(5) Véase Lester R. Brown, *The new world order*, Washington, Worldwatch Institute, 1991. Asimismo, Alvin Tofler, *The power shift*, Bantam Books, New York, 1991.

(6) Véase Gonzalez Casanova, Pablo, *La crisis del estado y la democracia en el Sur*, s.p..

valores que tutelan los derechos civiles y políticos sin paralelo desarrollo de los derechos económicos, sociales y culturales que les posibiliten contenido material dentro del entramado social, también es evidente que - dentro del nuevo ámbito físico de las interrelaciones de poder a nivel nacional y supranacional - la realización de los anteriores valores sólo es posible dentro del contexto de la globalidad.

Y hablando cabalmente de *globalidad* hoy más que nunca es evidente que el modelo industrial supranacional y las relaciones de producción de la sociedad mundial - así como las proyecciones de su calidad de vida están estrechamente relacionadas con las condiciones del habitat humano y natural y las posibilidades de sostenimiento o evolución del actual modelo de civilización. En dos palabras, la sociedad política y sus distintas instancias - jurídicas, económicas, culturales - no pueden enajenarse en forma alguna del medio natural donde se desarrollan y, además, del ámbito de globalidad que le es inherente.

Estas reflexiones permiten abordar, finalmente, el discurso de la especificidad y el de la globalidad en su justa dimensión. Por un lado es evidente que, tanto los *derechos humanos* como el *medio ambiente* tienen que ser considerados, obviamente y por su misma base epistemológica, áreas distintas del conocimiento, así como, por razones similares, cosas distintas son también el puro *derecho ambiental* como disciplina sustantiva de la instancia ética general que suponen los *derechos humanos*. Por otra parte, sin embargo, hoy más que nunca, es claro que una visión compartimentada y dividida de las ciencias sociales y del conocimiento humano es imposible, toda vez del complejo y denso nivel de interrelaciones e interdependencias del entramado social. Todo factor social, cultural, físico del ser humano y su entorno (especialmente incluido el medio ambiente) influye en el ámbito de la sociedad política y su desarrollo. Y cabalmente la sociedad política, dentro de este marco de complejidad y globalidad que hoy la determina, es el objeto de esta ética colectiva que llamamos los derechos humanos.

The Role of Non-Governmental Organizations in the Fields of Human Rights and the Environment and the Inter-Relationship Between Experts and Practitioners

BÖRJE SJÖQUIST

Introduction

After having listened to all the expert interventions during the last two days I have been even more convinced, than I was before, that we stand at a crossroad in the search for solutions to save the planet. Some of the perspectives that you have outlined in your broad exposures are far from positive in the sense that we really don't know how the international society is going to react to the present deteriorating situation on global environment.

The UNCED Conference in Rio de Janeiro, Brazil in June will be essential to that matter, but we all know that there is a deep gap between the desires of the third world countries, backed by many environmental NGOs in the north and south, and the willingness of the industrial countries to agree to measures that really put us on the right track to sustainable development and environmental protection.

We have dealt in depth with environmental law and human rights law, particularly the issue of the right to a sound and healthy environment as a Human Right.

We have also dealt with the issue of whether or not there exist a right for future generations to the environment, or if rights, in the context of international law, are something that can only be exercised by present generations.

The legal experts on these issues are not in agreement whether or not such a right exists. The theories by Professor Edith Brown Weiss regarding intergenerational equity are very interesting, although they might be questioned by many of the present legal experts.

Apart from the majority of you I am not a lawyer and I have not dealt in depth with all these legal complex issues on a daily basis.

Notwithstanding this inadequacy, I would like to express an opinion, that I believe that most non-experts like me and other people engaged in NGO work on Human Rights and Environment, have adopted during the last years, as a result of the growing awareness of the critical situation that we encounter.

We believe that the issue of a right to the environment first of all is a moral issue and not primarily a juridical issue.

The evolution of both environmental law and human rights law, as well as other areas of international jurisdiction, indicates clearly that there is an implicit intention of protection of the human being connected to all international instruments adopted in these fields.

This intention of protection of present and future generations in international environmental law has its bearing from human moral considerations and the instruments for exercising these intentions of protection of the human being are the laws! Not the other way around!

Subsequently, based on the knowledge we have adopted regarding the present deteriorating state of natural resources, global warming, accelarated exploitation, population growth, we have a moral obligation to protect, preserve and transfer to next generations a habitable planet!

In order to achieve this there is a need of a number of measures, amongst which new laws on the protection of the environment; e.g., *The New Earth Charter* is one among many other important measures.

In this respect the lawyers and all other experts on environmental issues and Human Rights are important. But the lawyers and experts cannot accomplish everything themselves, and the laws adopted will not solve all problems.

There is a need of many other measures including participation by all people to change their behaviour and increase their awareness. What we need is a mobilization of all forces available, if not at least the organized community of NGOs.

Therefore, in my opinion, there exists a symbiotic relationship between the experts and practitioners which, fully accepted and understood, could enforce the implementation and promote law-making efforts to the benefit of all.

Unfortunately there has been a tendency amongst lawyers and experts, and now I am referring directly to you as a collective representative group, to neglect the necessity to mobilize public awareness and public participation in order to achieve political decisions in a direction that satisfies the demands that come from your findings. Very often your scientific findings correspond to public awareness of existing problems, but there is a lack of a coherent and comprehensive approach to mobilize the support needed to reach significant results. At least in a short time perspective, I don't know if this is due to the isolation that academics sometimes

tend to revert to. Maybe it is a natural phenomenon that experts talk to experts and others must find their own ways of communication?

In any case, I am very anxious to appeal to you as a group of distinguished experts on the highest level to collaborate extensively with practitioners, i.e., those people who could be your instruments to disseminate and implement the results of your work which corresponds to established values amongst the population.

The need to do something, and to do it urgently, about the desperately deteriorating situation on environment is becoming common conviction among all people.

The political pressure that experts and practitioners together can put on Governments will be much harder and the likelihood that we together can increase public awareness and public participation to achieve better results is obvious.

To summarize the above: I surely believe that you as lawyers and other experts should gain a lot more from the close collaboration with practitioners.

The Role of NGOs

There has been some criticism towards the effectiveness of NGOs, especially the Latin-American NGOs, who are considered to be disoriented, ineffective, introvertal and lacking proper strength and organization. The legal experts seem to believe that NGO involvement in many respects is useless due to the lack of expertise and strength needed to solve important problems.

In some respects this might be true and change is essential to increase the image of Latin-American NGOs, not at least in the light of future donor relations and the need of co-operation, networking and effectiveness in implementation capacity.

But in many respects, above all in Human Rights work, the criticism is highly unjustified, especially when looking back to the work carried out by these NGOs during the many years of military dictatorships in a number of Latin-American countries and in countries with constitutional democratic systems, but where violations of human rights occur on a massive scale.

I don't know enough about the numerous environmental organizations in Latin-America, which seem to have had an endemic evolution in recent years, to have a clear opinion on the influence and importance of these organizations.

In the legal and experts circles there is however a tendency to understimate the importance of practical implementation, most often carried out by dedicated persons working on a voluntary base in various NGOs.

For this reason I would like to give you two examples to legitimate the role of the NGOs.

One example is from the European scene and the other from Latin America.

During the last decade the increase of public xenophobia in many European countries had reached such hights that we are reminded of the mass persecutions of the Jews and non-aryans, and political dissidents, from the 1930s, although this time the subjects of persecution and resentment are a collective set of foreign immigrants from non-European countries who have turned to Europe in order to escape persecution, war and fatigue from 3rd world problems.

Despite a huge number of international and regional legal instruments, often implemented in domestic law, on protection of asylum-seekers and refugees under the principle of non-refoulement, and the right to asylum under the 1951 U.N. Convention on Refugees and the 1967 Protocol thereto, the deterioration of asylum policy in Western European countries during the 1980s has been a very serious and negative development.

All countries have tightened their asylum policies to a maximum, in order to decrease the influx of new asylum-seekers of non-European, or east and south-European origin, leading to massive human tragedies and a deterioration in humanitarian norms and practices.

The laws have been important to facilitate protection for many of these peoples but in many, many cases the laws, and the efforts made by lawyers, have been inadequate to provide necessary protection.

The States have simply not been ready to live up to their obligations according to international agreements. Strictly national interests have been more important for them, than the fulfillment of legal obligations or the execution of the principle of international solidarity.

To counter this negative development we have witnessed an outstanding mobilization of the European NGO community, within the framework of the European Consultation on Refugees and Exiles (ECRE), which have been very successful in terms of promoting the right of asylum within various European fora, *inter alia*, the Council of Europe and others to remind States of their obligations under relevant international instruments.

Without the mobilization and the efforts made by the European NGOs the situation for asylum-seekers and refugees in Europe would have been much worse than it actually is. Despite this the situation is much worse than it should be allowed to be with reference to the legal obligations adopted by the States.

However, the legal provisions have not been enough to uphold satisfying standards provided for in the international instruments when Governments have been confronted with unprecedented events. The national interest has taken over.

Thanks only to the mobilization of the NGO community some safeguards have been preserved in law and practice which allow to say that Europe still has an asylum policy worthy of recognition.

The other example on NGO importance I would like to give you is from Latin-America, namely from Chile.

In the Quinquém Valley in the South of Chile an indian tribe, named Pehuenches of the Mapuche group, has lived for many generations. The area was never inhabited by the Spanish and has always been considered as "Mapuche-land".

Some years ago a large Chilean private forest exploiting Company "bought" a huge part of land from the military government and legalized the property at a Chilean court. The indians were obviously unaware of the significance of the act, and for that matter nothing happened in a number of years so the indians just continued to live there as they always had done.

In the meanwhile the Company exploited other forestal areas of their property with good yield. The stockowners were happy and urged the Company leadership to gain more.

Suddenly the Company decided to exploit the valley where 26 Pehuenshe families lived and they obliged the indians to leave the area. When the surprised indians refused to leave the Company asked for police assistance to evict the indians from the land.

It was fully clear that the legal owners of the land, according to Chilean domestic law, was the multi-national Forest Company and not the indians.

Subsequently there were no legal recourses to the advantage of the indians.

The land belonged to the Company and the Company was not willing to abstain from its legal right to exploit the valley.

After the mobilization of the local population the case became known, with the help of the media, to the Chilean and, after a while, to the international NGO-society.

The reactions from a number of national and international NGO-groups were furious and forced the Government to start negotiations with the Company.

After a long time of negotiations, including the governmental threat to expropriate the land, an agreement was reached in which the Government paid an outstanding amount of money to the Company for the "future loss of expected yields" and the Company abstained from the right to the land.

This happy solution would never have been obtained without the enormous mobilization of public awareness and reaction that came about, which principally was achieved by national and international NGOs.

It is furthermore interesting to note that this issue, which was primarily interpreted as a human rights issue (the inherited right of the indians to remain on the land where all previous generations had lived), which in no way could be solved with legal measures, during the exposure to the national and international scene was converted to an environmental issue of international importance: namely, the preservation of the earth's oldest forest accesses!

The interlink between environmental protection and human rights protection suddenly became obvious for all parties concerned and this happened outside the legal context. It was the moral conscience for justice and rights amongst ordinary people that solved the case by reaction and mobilization in an issue where the lawyers, and the legal system, didn't have an answer.

It is also interesting to note that this perhaps was the first time where environmental organizations played a more important role in a Human Rights issue than the human rights organizations themselves.

In all circumstances the NGOs played a much more important role than the lawyers in the solving of this particular case. (In order not to be misunderstood I would like to emphazise that the opposite situation has more often occurred in the past and will most certainly occur in the future). These two examples show that the importance of NGO existence and action is essential to solve human problems and that co-operation between experts and practitioners is inevitable for successful results.

Concluding from these experiences the role of the NGOs could be summarized, *inter alia*, in the following way:

NGOs can play an essential role in the evolution and implementation of human rights and environment laws, and in solving up-coming human rights and environmental problems by the following measures:

- providing protection and assistance to vulnerable groups in the fields of human rights and environment,
- raising and promoting public awareness to the problems in these fields of action including participation in remedy-finding activities,
- serving as pressure-groups on Governments, Private Companies and the International Community when appropriate,
- implementing programs of action with the purpose of finding solutions to human rights and environmental problems,
- fundraising activities in support of human rights and environmental activities at home or abroad.

The Swedish NGO-Fund for Human Rights

I would like to inform you of a recently established Fund for Human Rights, which I have had the privilege to prepare on behalf of six Swedish Humanitarian Agencies, namely the Swedish Red Cross, Save The Children, the Swedish Section of Amnesty International, Diakonia, the Lutheran Aid and the Swedish Church Mission.

This new Fund will operate from a secretariat in Stockholm, Sweden with the purpose to fund human rights activities in the 3rd world.

Another objective of the Fund is to promote and disseminate knowledge of human rights law and international humanitarian law to the Swedish public.

In the funding operations three objectives have been adopted:

- institutional support to a few number of Human Rights Agencies in different continents to enable them to strengthen their capabilities to implement projects and carry out protection activities. This objective has been adopted as a reaction to the past negligence of donors to the need of institutional support, which is essential as a tool to efficient implementation of projects in the Human Rights field.

- financial support to human rights groups or activists at local level, mainly in the form of project-oriented funding.

- participating in activities such as net-working, organization of seminars, providing experts in legal and other matters etc. The idea is that the Fund, contrary to many other funding institutions, wants to play a participating role in the field and not only be a passive funder.

The secretariat of this new fund was set up by the 1st of January 1992. A Director, two professional officers and one administrative assistant are now in the initial stage of planning and preparing the future activities in collaboration with the Board, which consists of the respective Secretary-Generals of the six sponsoring Agencies.

International Projects of Research on Human Development (IPREHUD)

IPREHUD is a newly established Institute based in Sweden and Chile with the purpose to promote cooperation between NGOs in the North and the South in the fields of Human Rights, Development and Environment.

Some of the problems facing NGOs in the South have been mentioned at this Seminar and some criticism has been expressed over the efficiency, or lack of such, and lack of real influence, that NGOs have demonstrated. I have contested this criticism above, but of course there is some substance to these allegations.

For that reason it might be interesting to note that the objectives of IPREHUD are just in the direction to assist NGOs to overcome these problems, but also to serve as a resource base for NGOs in various fields of action on a consultative basis.

As consultants, and often as implementors, we are carrying out a number of activities on behalf of, or in collaboration with, NGOs in Sweden and in Latin America, i.e.:

- research projects,

- planning and implementing of projects,

- evaluation of projects and the use of funds,
- organization of seminars, round tables and campaigns etc.,
- counselling and advice services,
- net-working and linking between donors and recipients.

In summary: we are supporting NGOs in tasks they have difficulties in carrying out themselves due to lack of time, lack of adequate trained staff or experience, insufficient staff resources, or ethical problems, e.g., evaluation of their own projects.

Some examples of projects we have carried out during the last three years or are working on at the moment:

- On behalf of a huge number of Swedish NGOs: The outlining and implementation of a nation-wide campaign to counter xenophobic tendencies in Swedish society (1988/89);

- On behalf of the Swedish Red Cross: Research and fulfilment of a background document on terrorism and the phenomenon on hostage-taking, including rehabilitation efforts of victims, to the World Conference on Wartime Medical Services in Stockholm (1989);

- On behalf of the Swedish Government: A study on the conditions, problems and challenges for returning exiles from Sweden to Chile (1989/90);

- On behalf of six Swedish Humanitarian Agencies: Background research and implementation of the establishment of a Swedish NGO-Fund for Human Rights (1989/91) (see above);

- Outlining and implementation of a Seminar on Human Rights, Development and Environment in Latin America in collaboration with Wallenberg Institut of the University of Lund, Sweden; the Green College, Colombia; the Center of Alternative Development (CEPAUR), Chile; and human rights groups in Latin America. The Seminar is planned to be a follow-up Seminar to the UNCED Conference in Rio, probably in the spring of 1993;

- Participation in the outlining and implementation of an assistance program for returning exiles in Chile in collaboration with the Swedish Refugee Council and Chilean NGOs;

- On behalf of the Swedish Red Cross: Background research and organization of a Round-Table on International Arms Trade (1992/93);

- Participation in the outlining of a new State system for reception of refugees and asylum-seekers in Sweden (1992).

A number of other activities are under discussion while the list is not complete, but can serve as an example of the work carried out by IPREHUD in Sweden and in Latin America.

The role of NGOs will continue to be important in all fields discussed at this Seminar.

We believe that a dialoge and an exchange of ideas and direct participation in activities aiming to strengthen NGOs in both the North and the South are important issues during the next decade.

IPREHUD is willing to play a role in this field and we believe that our background from European and Latin American NGO work can be of benefit to the NGO development in both continents.

La Labor de la CEPAL y del ILPES y las Evaluaciones del Impacto Ambiental

VICENTE RAMÍREZ

1. La Comisión Económica para America Latina y el Caribe (CEPAL) y el Medio Ambiente

Dentro del sistema de Naciones Unidas, la CEPAL tiene como propósito principal apoyar los esfuerzos de los países de la región para desarrollarse en forma integral y sostenida con el objeto de elevar los niveles de vida de los sectores mayoritarios de la población. Para ello sostiene que no basta expandir la dotación de capital social en sus categorias tradicionales, sino que resulta insoslayable reconocer la estrecha interdependencia entre sociedad y naturaleza, y por consiguiente asumir la responsabilidad de administrar los activos ambientales de forma que se garantice la sustentabilidad del desarrollo y una adecuada calidad de vida.

La necesidad de profundizar la comprensión sobre el mutuo condicionamiento entre el desarrollo y la base ecológica que lo sustente, llevó a la CEPAL a crear la Unidad Conjunta CEPAL-PNUMA de Desarrollo y Medio Ambiente como respuesta al mandato de la Conferencia de Estocolmo y lo foros internacionales que siguieron, y con la misión de ocuparse de la problemática ambiental latinoamericana y caribeña.

La Unidad se orienta así al cumplimiento de un rol coordinador y promotor de esfuerzos conceptuales y operativos en las áreas más relevantes de dicha problemática. Por lo demás, en la actualidad, la crisis que afecta a las economías latinoamericanas plantea nuevos desafíos para diseñar una gestión ambiental que supere las tradicionales posiciones defensivas y busque el aprovechamiento integral del patrimonio ambiental evitando su deterioro y logrando crecientes niveles de producción y productividad.

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En este contexto, el programa de trabajo de la Unidad se concentra en algunas áreas de especial importancia: la expansión de la frontera agropecuaria, la sobrevivencia campesina en ecosistemas de altura, las grandes obras de infraestructura, la urbanización, el proceso de industrialización. Las actividades incluyen: colaboración para incorporar la dimensión ambiental en los trabajos de la propia CEPAL; estudios e investigaciones; colaboraciones con los gobiernos y otras instituciones en asesorías, capacitación y promoción de la cooperación horizontal.

2. El Instituto Latinoamericano y del Caribe de Planificación Económica y Social (ILPES) y el Medio Ambiente

El ILPES tiene, dentro de la organización del sistema de la CEPAL, la responsabilidad de proporcionar a solicitud de los gobiernos, servicios de capacitación y asesorías en materia de planificación del desarrollo en sus distintos niveles y dimensiones. En esta perspectiva ha ido incorporando las diversas facetas de este proceso así como las metodologías y énfasis necesarios a las realidades de la región.

En el campo del medio ambiente, el ILPES ha impartido cursos en la temática de cómo incorporar la dimensión ambiental en la planificación del desarrollo desde 1974, en colaboración con el Centro Internacional de Formación en Ciencias Ambientales (CIFCA), la Fundación Karl Duisberg Gesellschaft (CDG) del Gobierno de Alemania, las unidades y divisiones de la CEPAL que se ocupan de los problemas ambientales y de los recursos naturales, y otras instituciones de alcance nacional e internacional.

Mas específicamente, la dimensión ambiental en los proyectos, la gestión de cuencas hidrográficas, la evaluación del impacto ambiental, la planificación y el medio ambiente, el medio ambiente y el desarrollo regional, y más recientemente, la gestión de residuos, han sido materia de cursos y seminarios que el ILPES ha organizado o en que ha colaborado.

3. Las Evaluaciones de Impacto como Instrumento de Gestión Ambiental

Durante los últimos años ha surgido una creciente preocupación por armonizar los objetivos del desarrollo y la preservación del medio ambiente. La necesidad de dar un contenido operativo a esta idea ha llevado a elaborar marcos legales e institucionales adecuados a este propósito, así como instrumentos metodológicos de gestión ambiental.

Entre éstos ha ido adquiriendo cada vez mayor aceptación la aplicación de las Evaluaciones del Impacto Ambiental (EIA), de las que los países desarrollados

cuentan con una amplia experiencia. Si bien ya existen en la región latinoamericana algunos intentos en la realización y utilización de las EIA, su desarrollo encuentra todavia serias deficultades de orden técnico y operativo que limitan la incorporación efectiva de las consideraciones ambientales en los procesos de decisiones sobre planes y proyectos de desarrollos.

Además las actuales condiciones democráticas de América Latina han promovido la preocupación por el grave deterioro del medio ambiente, lo que se ha transformado de un clamor ciudadano en un asunto de Estado. Un amplio debate está teniendo lugar sobre la problemática ambiental en todos los niveles de la sociedad. Sin embargo, la voluntad de enfrentar los problemas y el afán de resolverlos se topan con dificultades generalizadas para buscar las mejores soluciones.

Esto ocurre tanto por la falta de recursos del Estado, como por el desconocimiento de los fundamentos de muchos de estos problemas y sus posibles respuestas; así como también por la débil conciencia ambiental de que padecen diversos sectores. El sector público carece de profesionales capacitados en materias ambientales específicas, y las posibles acciones que los organismos estatales tengan en el futuro como producto de mandatos legales se verán amenazadas por lo anterior.

Se requiere, pues, tomar iniciativas para buscar modos de contribuir a mejorar la capacidad analítica y operativa de los funcionarios públicos en materia de gestión y planificación del medio ambiente.

Entre éstas, la capacitación constituye una fórmula privilegiada por dotar a profesionales de los elementos necesarios que les permitan afrontar decisiones con una base de conocimientos, tanto en aspectos conceptuales como metodológicos.

En este sentido la capacitación y asesoría que el ILPES imparte ha estado dirigida a los siguientes puntos:

- Analizar las relaciones entre desarrollo y medio ambiente desde los planteamientos globales, regionales y sectoriales hasta su concreción en planes y proyectos, y explicación de la problemática ambiental en sus vertientes ecológica, social y política.

- Revisión crítica de los estilos de desarrollo que se han ensayado en América Latina, identificando sus incidencias sobre el medio ambiente y proponiendo líneas de acción contenidas en estrategias alternativas de desarrollo.

- Estudio de las interrelaciones entre el medio ambiente y la planificación, de modo de:

i - Proporcionar una visión global del proceso de planificación por niveles y horizontes, con énfasis en los niveles global, regional y de cuencas hidrográficas, y en un horizonte de largo plazo;

ii - Analizar críticamente las vias de incorporación del medio ambiente en la planificación en sus diferentes niveles, dimensiones y horizontes temporales;

iii - Identificar métodos e instrumentos de formulación, evaluación y ejecución de planes y proyectos de desarrollo con consideraciones ambientales.

- Análisis del impacto de los proyectos sobre el medio ambiente en razón de la ejecución de procesos de toma de decisiones, racionalización en el uso de los recursos y selección de tecnologías. Asimismo, presentación de métodos para la elaboración y avaluación de proyectos que incorporen la dimensión ambiental.

- Presentación de propuestas de formulación de políticas, planes y proyectos de largo plazo que incorporen explícitamente lo ambiental, en áreas tales como asentamientos humanos, gestión de recursos renovables y no renovables, ciencia y tecnología, energía, manejo de desechos, contaminación, etc.

El Rol de la Mujer Latinoamericana y Caribeña en la Protección del Medio Ambiente

ELIA GARCIA McCOMIE

La mujer y sus organizaciones juegan un papel importante en la promoción del conocimiento, educación y administración del medio ambiente. Ella es un factor clave en la integración de asuntos ambientales en la comunidad. La Asamblea Global Mujer y Medio Ambiente, un proyecto de WorldWIDE Network, se efectuó en la ciudad de Miami en noviembre de 1991 con enfoque especial en cuatro temas: agua, desechos, energía y tecnología y servicios adecuados. Las 218 representantes de países de las distintas regiones del mundo presentaron sus experiencias y explicaron el exito de sus proyectos en el manejo del medio ambiente dentro del contexto de la actual degradación ambiental.

En las ponencias en este Seminario hemos escuchado excelentes exposiciones detallando la severidad del deterioro del medio ambiente, algo que nos concierne a todos - y a todas. Por ende, ha surgido el interrogante de que, dado que el medio ambiente es un problema universal, porqué hay que hacer una diferencia, una separación, entre hombre y mujer en la temática del medio ambiente? Es innegable que la degradación del medio ambiente afecta de manera distinta el hombre y la mujer. La mujer está estrechamente vinculada ao medio ambiente al cumplir con suas responsabilidades en la vida cotidiana y en su rol de reproductora. Está más expuesta y es más susceptible a la contaminación, sea en el campo o en la ciudad. El daño a su salud afecta a otras generaciones. El documento da Naciones Unidas, *World's Women 1970-1990*, señala que en nuestra región apróximadamente un 17 porciento de las mujeres entre 15 y 49 años sufren de anemia y el porcentaje aumenta a un 30 porciento entre las mujeres embarazadas. Sin embargo, en los paises industrializados, ese porcentaje baja al 11 porciento de las mujeres entre 15 y 49 años y al 14 porciento entre las mujeres embarazadas. Si la salud de nuestras mujeres ya es precaria, no necesitamos agravarla con el continuo ataque al medio ambiente. Y tomando en cuenta el papel dominante que

desempeña el hombre en la toma de decisiones que afectan la puesta en vigor del modelo de desarrollo que sigue el mundo, incumbe al hombre asumir la responsabilidad por los agravios que resultan de este modelo de desarrollo.

Desde la perspectiva femenina, la crisis que enfrenta América Latina y el Caribe en los campos económico, social y ecológico, es producto del modelo de desarrollo aplicado hasta el momento. En lo económico, la opresiva deuda externa y la caída de los precios de exportación de las materias primas; en lo social, el aumento de la pobreza como consequencia de la política económica y de ajuste estructural que son requisitos para lograr el equilibrio financiero en lo ecológico, el grave deterioro de nuestros recursos naturales, la contaminación del agua, aire y tierra, y la destrucción de los ecosistemas con condiciones que agravan la situación económica y social. La falta de consideración ambiental en programas de desarrollo, programas que muchas vezes favorecen a sectores dominantes, produce condiciones que afectan negativamente y con mayor fuerza a los sectores más vulnerables de la población.

De los sectores vulnerables, la mujer constituye la mitad de la población total de nuestra región, cifra que suma 198 millones de mujeres en América Latina y el Caribe.

En las últimas décadas se ha registrado un aumento en los progresos alcanzados por la mujer latinoamericana y caribeña. Se aprecian estos progresos en la educación y los derechos sociales, pero no en su participación activa e igualitaria en la sociedad, especialmente en lo que concierne a la formulación de políticas y ejecución de programas a nivel nacional que afectan su destino y el futuro del planeta. Tampoco se perciben grandes cambios en los roles domésticos, o lo que llamamos la doble jornada. El informe de 1990 del Banco Interamericano de Desarrollo de 1990, *Progreso Económico y Social en América Latina, La Mujer Trabajadora en América Latina*, indica que se calcula que "las responsabilidades domésticas y otras actividades no remuneradas pueden totalizar alrededor de sesenta horas a la semana". Cabe señalar que, hasta cierto punto, los progresos mencionados han mejorado la condición de vida de la mujer en los ambientes urbanos, pero la mujer indígena y la mujer campesina aún sufren condiciones desventajosas.

Pudiera decirse que las condiciones de vida de la mujer y la importancia de su contribución a la familia, a la economía y el hogar fueron ignoradas hasta la Década de la Mujer (1975-1985), que culminó con la firma del Acta Contra la Discriminación y en la afirmación de la estrecha relación que existe entre la mujer y el medio ambiente. Desde entonces se ha producido un cambio notable. Los organismos de cooperación internacional y la mayoría de los gobiernos han establecido pautas y mecanismos para proporcionarle a la mujer oportunidades de educación, de participación en el sector público y también para mejorar la calidad ambiental. Sin embargo, hasta el momento hay muy poca representación femenina en los temas ambientales a nivel de toma de decisión.

Las mayores oportunidades educativas y la decisión de integrar a la mujer en el sector público y en proyectos de desarrollo, coincidieron con la necesidad de enfrentar el crecimiento demográfico en América Latina y el Caribe. Este es uno de los aspectos de la relación de la mujer y medio ambiente que es materia de controversia. Sin embargo hay consenso en el reconocimiento de que la mujer que tiene acceso a la educación y a la planificación familiar tiende a mejorar su salud y su productividad.

Dentro de la esfera familiar, *la mujer continúa siendo el factor fundamental en la transmisión de valores y de educación.* Es la principal protagonista, el eje, de la estructura social para el desarrollo de la sociedad. Tiene la responsabilidad de establecer las pautas de consumo, la nutrición, educación y cuidado de los niños y el cuidado de los ancianos, los quehaceres del hogar, el trabajo fuera del hogar, el trabajo en el sector informal o formal, la producción de alimentos, caminar largas distancias y llevar cargas pesadas en el acarreo de leña y agua. El deterioro de los recursos naturales aumenta las horas de este trabajo invisible, a veces hasta 16 horas diarias. Su aporte productivo no forma parte de los informes económicos, no es remunerado, y sí lo es, el salario es bajo. Aunque su productividad es baja por que no tiene acceso a crédito, propiedad, ni transporte, es parte integral de la subsistencia de la sociedad.

Estadísticas recientes indican que un alto porcentaje de mujeres son jefas o eabezas de familia. Los hogares encabezados por mujeres tienden a ser pobres por su ingreso inferior y porque, como cabeza de familia, ella asume la responsabilidad del resto de la familia, que puede incluir, además de los niños y niñas, a hermanos y padres. *World's Women 1970-1990* señala que en Amércia Latina y el Caribe el porcentaje alcanza hasta el 40 porciento en algunos países. Esto se debe a la migración de los hombres que, en busca de trabajo se van a los centros urbanos, a las minas, y plantaciones. O por divorcio, abandono, o madresolterismo.

La mujer indígena, que comparte esas condiciones, tiene la desventaja adicional de la casi total desaparición de comunidades y culturas milenarias que han mantenido una relación armoniosa con los recursos naturales. La devastación de los bosques por razones de política y comercio ha prácticamente eliminado las fuentes de recursos de plantas medicinales y alimentos para su subsistencia.

El modelo de desarrollo no sostenible que nos ha legado la erosión y el empobrecimiento del suelo, la contaminación de los cursos de agua por los desechos tóxicos, la contaminación del aire, el deterioro de la capa de ozono, la disminución de fuentes de energía, la degradación de las costas, la pobreza y otras tantas tragedias, nos han traído como consequencia también la acelerada migración rural a los centros urbanos. La mujer también ha formado parte de la migración campo-ciudad. En los últimos 20 años, el mayor aumento en la proporción de la mujer en los ambientes urbanos ocurrió en América Latina y el Caribe. *World's Women* calcula que este aumento llega a un 73 porciento. De este número, el 40 porciento son menores de 15 años. Se estima que para el año 2025 el 85 porciento

de la población total de nuestra región estará ubicada en las ciudades. Este desplazamiento desbordado ha tenido como resultado un aumento en la pobreza, escasez de servicios básicos, contaminación en general, violencia doméstica, crimen, prostitución y drogadición.

Aunque las oportunidades de trabajo para la mujer parecen ser más abundantes en las zonas urbanas, ella tiene que enfrentar la discriminación. La mujer sigue como trabajadora en el sector de servicios y el sector informal, que rara vez le ofrece los beneficios que ofrece el sector formal, o trabaja en pequeñas empresas, industrias que utilizan maquinarias obsoletas y contaminantes. Si trabaja en el sector público como profesional, o en oficinas, es a nivel y a salario más bajo que el hombre. El problema del desempleo afecta especificamente a la mujer, pues es ella la primera a ser despedida.

Este análisis de la problemática mujer y medio ambiente fué discutido ampliamente en la Asamblea Global en Miami. La Asamblea permitió conocer el grado de organización y participación cívica y moral del cual es capaz la mujer en la defensa de los derechos ambientales, que la afecta directa o indirectamente. En los distintos rincones del mundo la mujer ha creado o participado en grupos y movimientos de conciencia que abarcan sectores diversos, en muchos casos impulsados por una sola mujer. Por medio de talleres, formales o informales, que involucran a la mujer se inicia el proceso de *concientización, educación y acción.* También se llega a un intercambio educativo. Por ejemplo, la mujer profesional aprende de la mujer indígena o campesina el uso de plantas medicinales. A su vez, la mujer indígena o campesina tiene la oportunidad de mejorar la higiene y salud de la familia. En la mayoría de los casos, el rol de las organizaciones no-gubernamentales o de agrupaciones femeninas es imprescindible para la organización y financiamiento de los *talleres educativos y de concientización.* En Costa Rica, con la ayuda de una organización no-gubernamental, un grupo de mujeres organizó un proyecto para construir hornos o fogones que utilizan energia solar. Por medio de talleres las mujeres aprendieron a construir también fogones de bajo costo que utilizan menos leña. Con los ingresos de la venta de estos fogones, las mujeres han comenzado una huerta comunitaria para el consumo de suas familias. En México un grupo de mujeres pro-defensa de derechos humanos ha podido crear conciencia, organizar y educar a las mujeres indígenas para lograr rescatar su comunidad de los avances de la industria maderera. En Colombia, las mujeres indígenas y campesinas tienen ya una asociación nacional que ha logrado el reconocimiento de sus derechos y fortalecimiento de su capacitación. Esta asociación surgió del trabajo de un grupo de mujeres profesionales.

La presentación en la Asamblea Global de las experiencias que han tenido éxito en el campo mujer y medio ambiente, permitió conocer y evaluar las estrategias, que se pudieran llamar de sobrevivencia, que la mujer de América Latina y el Caribe ha concebido para resolver los problemas ambientales que la impactan. Es fundamental en estas estrategias el trabajo conjunto de mujeres de los

distintos sectores. Se basan en un esfuerzo comunitario, organizando y administrando empresas de reciclaje, fogones mejorados, huertas cooperativas, conservación de manglares y muchas otras actividades.

En Lima, una bioquímica, motivada por la falta de limpieza pública y la contaminación ambiental en las zonas urbanas de la ciudad, dirigió un proyecto piloto que desarrolló una alternativa tecnológica para la recolección de residuos sólidos domésticos, utilizando pequeños vehículos, triciclos y motorcars. Estos vehículos permiten el servicio de recolección en districtos o sectores de difícil acceso o topografía accidentada y con escasos recursos económicos. Una parte importante de esfuerzos y recursos del proyecto se orientó a consolidar la participación conciente de la población organizada y en particular la mujer, puesto que ella es la que vive diariamente con el problema.

Dadas las características de la propuesta tecnológica original - bajos costos de implementación y operación, fácil manejo, uso de recursos locales y generación de puestos de trabajo para mujeres y hombres - ésta ha sido aceptada y en alguns casos adaptada por diferentes instituciones y municipios del Perú. Entre ellos, en Lima destacan los municipios de: El Agustino, Villa el Salvador, Ate-Vitarte, Comas, Carabayllo e Independencia.

En todos los casos se ha repetido el esquema promocional ensayado en 1987. Se estimula la participación de la población estableciendo espacios colectivos que permitan incorporar a la mujer como sujeto activo en la solución de los problemas urbanos.

La sustentabilidad económica de estos pequeños sistemas de recolección de residuos sólidos se ha logrado constituyendo pequeñas micro-empresas, formadas por 10 personas y 4 triciclos que son financiados directamente por los gobiernos locales (municipios). Aún cuando el municipio asume su responsabilidad por mantener limpio el distrito, éste contrata los servicios de la micro-empresa asignándole determinadas zonas del distrito y pagándole por el servicio de recolección de residuos sólidos.

La bioquímica presentadora enfatizó que la participación de la población en la formulación, implementación y evaluación del proyecto es imprescindible. Las rutas, frecuencias y horarios de recolección deben fijarse en discusiones colectivas con la comunidad, en donde la presencia de la mujer es importante, puesto que ella se encarga de las tareas que afectan directamente a la familia, la casa y el barrio. Así mismo, la mujer ejerce especial influencia en los demás miembros de la familia como "primera promotora de salud". Durante el proyecto se enfatizó el trabajo de *educación a la mujer*. Ella, por su capacidasd de influir positivamente en la vida familiar, permitió que el conjunto de la comunidad participe colaborando con el proyecto. Por otro lado, el sistema no funciona sin la participación de la mujer, puesto que a diferencia del sistema convencional (que es más caro), su usuario, que en una gran mayoría es la mujer que se queda en casa, debe colaborar con los

obreros encargados de la recolección, para depositar sus basuras en el pequeño vehículo recolector.

El proyecto pudo reducir la contaminación del aire, agua y suelos. Ya no se quema la basura, ni se arroja al río, ni se coloca en las calles y avenidas públicas.

La organización e implementación del proyecto tuvo tres fases: estudios preliminares, formulación de propuesta técnica y desarrollo del proyecto piloto. Los principales participantes en el proyecto fueran la municipalidad, la comunidad y el Instituto de Desarrollo y Medio Ambiente. Este último proporcionó la capacitación a las organizaciones de mujeres y trabajadores del municipio, coordinación y evaluación técnica del proyecto, apoyo logístico y financiero. El proyecto piloto tuvo una duración de un año (1987-1988). El costo del proyecto (US$ 25.000) fué financiado por el Catholic Relief Services, el Institut fur Internationalen Zusammenarbeith y la cooperación de un ingeniero. La fuente local fué la Municipalidad de Ate-Vitarte, como apoyo logístico; Municipalidad de San Martín de Porres y el Instituto de Desarrollo y Medio Ambiente (IDMA) sirvió de apoyo logístico.

Esta presentación detallada demuestra lo que se puede lograr cuando se busca la cooperación y coordinación entre las mujeres de los distintos sectores, a la vez trabajando conjuntamente con entidades oficiales y no-gubernamentales. En Jamaica una maestra coordinó la introducción de la cocina solar (solar box cookers) en las zonas rurales. En Paraguay una profesional ambientalista y su grupo han podido establecer y mantener por medio de las escuelas, equipos de niños, ninãs y jóvenes que estudian y protejen la naturaleza. En Bolivia una doctora y ambientalista ha investigado y ayudado a dar a conocer y respetar las prácticas de vida de una comunidad indígena de una cultura altamente ecológica, muy anterior a la colonia española y al Imperio Incaico. En la región nordeste de Brasil, una socióloga fué una das las iniciadoras y coordenadoras de un proyecto de bajo costo con tecnología apropiada para la decontaminación del agua del Amazonas. Con el apoyo de una organización internacional y con la participación organizada de la comunidad, el agua potable ya es una realidad a un precio más bajo que anteriormente. El gobierno estatal ha decidido poner en marcha un programa de agua potable utilizando la nueva tecnología. En México, en 1974, una ama de casa en una unidad habitacional (pequeño poblado) inició y organizó la Campaña de Amas de Casa para Regenerar las Tierras Erosionadas de México por medio de la separación de basura. El proyecto es ahora un negocio que produce desecho orgánico que se transforma en biofertilizante concentrado por medio del Sistema Integral de Reciclamiento de Desechos Orgánicos. Esta misma ama de casa, que ha logrado concientizar a miles de personas sobre la conservación de la tierra, ha compuesto y aún compone canciones ambientales para los niños y niñas. Acompañada de su guitarra es invitada frecuentemente por las escuelas de las diferentes regiones del país. Las autoridades están considerando incluir las canciones ambientales como parte del curriculum escolar.

Cada una de las experiencias expuestas en la Asamblea Global exhibe las características de creatividad, cooperación, tenacidad, capacitación y liderazgo que demuestran estas actividades exitosas. Desafortunadamente - o afortunadamente para ustedes - no les voy a presentar las otras 43 presentadas por nuestra región.

La Asamblea Global Mujer y Medio Ambiente ha enfocado y demostrado la comunalidad de problemas y el hecho de que toda la región comparte un ecosistema. Es más, los problemas abarcan el globo terráqueo, como lo indican las conclusiones y declaraciones presentadas a la Asamblea por las mujeres de las regiones de Africa, Asia y el Pacífico, Países Arabes, Norte América y América Latina y el Caribe. Estas declaraciones, estrategias y planes de acción serán presentadas al Cuarto Comité Preparatorio en Nueva York a celebrarse en marzo y a la Conferencia de Naciones Unidas sobre Medio Ambiente y Desarrollo en junio de este año. Adicionalmente se realizaron varias reuniones sobre el tema Mujer y Medio Ambiente, entre ellas la Consulta Interamericana Sobre la Mujer y Medio Ambiente de la Comisión Interamericana de Mujeres, llevada a cabo en Washington, D.C. y el Encuentro Internacional Mujer y Medio Ambiente en América Latina y el Caribe, que se efectuó en Quito. Las consideraciones preliminares de estas reuniones se presentaron a la Asamblea Global y coincidieron con las declaraciones de las regiones del mundo anteriormente mencionadas.

No voy a leer la *Declaración de las Mujeres de la Región Latinoamericana y del Caribe*, puesto que me tomaría mucho tiempo, pero sí quisiera mencionar dos o tres de los puntos salientes de la Declaración:

> - La degradación ambiental no puede ser considerada como algo desligado del analisis de los factores sociales, económicos, culturales y políticos que están afectando nuestras vidas y el ambiente. La pobreza y la degradación ambiental son causadas por un modelo económico fundamentalmente de explotación de la mujer y de la naturaleza.
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> - Los proyectos que las mujeres presentamos en las historias exitosas en esta Asamblea Global no solo deben ser reconocidos y reflejados, sino también relacionados con los procesos económicos y políticos que han causado los problemas que nosotros estamos tratando de resolver. No basta con el esfuerzo que nosotras hemos iniciado para resolver los problemas ambientales en nuestras comunidades: debemos también usar esas experiencias para confrontar las prácticas destructivas a nivel nacional y global que están agravando la degradación ambiental y los niveles de pobreza crítica.
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> - Por tal razón, queremos expresar nuestra profunda preocupación por la tendencia global hacia la economía de libre mercado.

- Consideramos necesario replantear el conocimiento orientándolo a una concepción holistica del medio ambiente natural y de la sociedad.

- Los medios de comunicación masivos se han convertido en el principal instrumento de perpetuación del esquema de dominación de la sociedad de consumo, y a través de ellos se perpetúa la irracionalidad y la depredación del medio ambiente. Es por eso que apelamos a las mujeres y hombres periodistas unirse a nosotras en esta lucha por mejorar la calidad de vida y el medio ambiente.

Estrategias y Plan de Acción para América Latina y el Caribe

Estrategias:

- Utilizar los mecanismos regionales de desarrollo ya establecidos (Pacto Andino, CARICOM, MercoSur y otros) para acordar un manejo ambiental que incorpore los principios establecidos en esta Asamblea.

- Incorporar a los programas y proyectos ambientales, económicos, sociales y otros, los principios para alcanzar un desarrollo sustentable.

- Lograr la participación activa de las ONGs y grupos de mujeres en la elaboración e implementación de los planes de desarrollo sustentable.

- Incluir en las discusiones del PrepCom de Nueva York las propuestas de la Asamblea Global, para que el pensamiento de las mujeres del mundo esté incorporado en CNUMAD 92.

Plan de Acción:

- Involucrar a grupos de mujeres y ONGs para realizar un plan de acción que comprometa a organismos internacionales y a gobiernos en acuerdos de manejo ambiental.

- Realizar, a través de foros comunitários, la difusión de las conclusiones y el proceso que se llevará a cabo en Brasil 92.

- Difundir en los próximos seis meses, con los medios a nuestro alcance, las experiencias exitosas que compartimos en esta Asamblea a fin de contribuir al mejoramiento y conservación de nuestro patrimonio ecológico y cultural.

- Incentivar la participación de las comunidades de base en la elaboración e implementación de planes de desarrollo sustentable a

nivel nacional, regional y local, utilizando los medios masivos de comunicación.

Finalmente, pedimos a las Naciones Unidas y a los Gobiernos tomar las siguientes decisiones:

- No desarrollar nuevos proyectos de energía nuclear.

- Incorporar sistemas alternativos de protección y renovación de los recursos naturales (utilizando normas ecológicas), fortalecimiento de la biodiversidad y estímulo de la investigación en estos campos.

- Utilizar un enfoque de costo-beneficio que privilegie los valores ecológicos humanos y no solo los financieros.

- Utilizar normas para la evaluación a largo plazo de los efectos negativos de la destrucción o alteración ambiental, de los valores culturales y de la calidad de vida.

- Solicitar a las Naciones Unidas la creación de un Tribunal Ecológico Internacional con la participación de grupos de mujeres y de la sociedad civil para juzgar los atentados contra el ambiente y la vida humana por parte de los gobiernos, los organismos internacionales y/o las empresas privadas multi o nacionales.

- Fomentar la difusión de información y el debate en los países acerca del canje de deuda externa por naturaleza, asegurando especialmente la participación de los grupos de mujeres y de la sociedad involucrados.

- Establecer en las Naciones Unidas un mecanismo global ambiental que garantice la satisfacción de las necesidades de los pueblos y de la naturaleza.

- No nos hemos dado una tarea fácil de lograr, pero sí una tarea que no es imposible.

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Pueblos Indigenas y Medio Ambiente(*)

DIEGO A. ITURRALDE G.

I

Las mayores proporciones del oxígeno y de las aguas que aseguran la supervivencia de la humanidad se producen en bosques tropicales - como la Amazonia - ocupados por pueblos indígenas tradicionalmente considerados como primitivos en el mundo contemporáneo. También están en sus territorios, importantes yacimientos de petróleo, minas y especies animales y vegetales de inapreciable valor para la alimentación, el cuidado de la salud y el desarrollo industrial. Pese a su actual deterioro físico, las zonas rurales de los Andes y las poblaciones indígenas allí asentadas conservan importantes emporios de tubérculos alimenticios como la papa, y los valles mesoamericanos la simiente de incontables variedades de maíz. La preservación y conservación de estos recursos se funda en un conjunto de condiciones muy variadas, entre las cuales debe reconocerse como prioritario el esfuerzo cultural de los pueblos - elemento consciente y voluntario de la relación sociedad-naturaleza por utilizar el medio de conformidad con sus particulares características y potencialidades.

Este esfuerzo se ha dado y se da bajo condiciones de relativo aislamiento, como en las sociedades cazadoras y horticultoras itinerantes de los bosques tropicales; pero también persiste en situaciones coloniales y contemporáneas donde las prácticas indígenas compiten en desventaja con las acciones de depredación de los modelos industriales de desarrollo. El examen de los conocimientos, y de las prácticas tradicionales de aprovechamiento de los recursos por parte de las sociedades indígenas en el pasado y en la actualidad, ponen en evidencia su

(*) Este texto ha sido elaborado a partir de una ponencia presentada conjuntamente con O. Arze al I Congreso Mundial de Etnobiologia (Belém, julio 1988), que se publicó en *Anuario Indigenista*, Vol. XLVIII, 1988.

superioridad para asegurar la conservación de la capacidad productiva del medio, con niveles aceptables de rendimiento en términos de la justa sustentación de los pueblos que los utilizan. Más aún, la literatura antropológica del tema da cuenta de la adecuación permanente de las instituciones sociales para responder a los constreñimientos de la naturaleza, así como de la sólida unidad de sentido que se desarrolla entre el conjunto de la vida cotidiana de estos pueblos y su relación con las fuentes de recursos que aprovechan.

Por otra parte asistimos, desde mediados del presente siglo por lo menos, a un proceso de expansión de las fronteras de ocupación efectiva de los territorios de los estados nacionales, en el cual la extracción esporádica y selectiva de ciertos productos estratégicos (como el caucho, el chicle, la corteza del árbol de sinchona, etcétera) da paso a la ocupación extensiva de los mismos para asentar excedentes de población, extraer masivamente los recursos naturales y sustituir el bosque, o los cultivos tradicionales, por plantaciones de materias primas vegetales de gran aprecio comercial, o formar pastizales para el mantenimiento de hatos ganaderos. Este proceso de expansión está a la vez relacionado con la urgencia de ampliar el control político y militar sobre la población y sobre el espacio (ejercer soberanía), con fines internos e internacionales.

Indudablemente, las tecnologías y los sistemas de explotación que se vienen impulsando en estas zonas son inconmensurablemente superiores en términos de los resultados intensivos e inmediatos para las economías nacionales; y los conocimientos científicos en que se fundan son más claros y sistemáticos que las aparentemente confusas y limitadas representaciones de los pueblos indígenas. Sin embargo, en este proceso de explotación ampliada se están afectando sistemas ecológicos y culturales extremadamente frágiles, produciendo alteraciones graves e irreversibles tanto en el medio como en las sociedades que los ocupan. Y, si nos atenemos a las evidencias que se observan allí donde la perturbación es secular, los resultados son: el empobrecimiento de los pueblos originarios y el deterioro del medio a extremos críticos. Más aún con excepción del petróleo, los resultados de la explotación y exportación de estos recursos con tan altos costos sociales y ecológicos no han sido suficientes para detener el deterioro de las economías nacionales o paliar la crisis, tanto el nivel de crecimiento en su conjunto, como los niveles de vida de la mayoría de las sociedades continúan a la baja.

Esta forma de apreciar los efectos del desarrollo no desconoce por supuesto las importantes contribuciones de la modernización en algunos campos como la salud y la educación, pero sí los relativiza frente a los resultados a mediano y largo plazo para los pueblos indios en el horizonte de cinco siglos de dominación colonial.

Estas breves consideraciones configuran la existencia de una contradición entre las opciones de uso del medio que ejercitan los pueblos indígenas y las implicadas en los modelos de desarrollo; contradicción que, entre otras causas, está

generando numerosos conflictos entre los pueblos organizados y las agencias gubernamentales de los estados donde viven.

En el marco de esta relación conflictiva se debe inscribir la acción de instituciones, organismos y grupos de la sociedad civil que luchan por la conservación del potencial ecológico, la causa de los pueblos afectados, y la causa de la defensa del medio ambiente. Comprendiendo que la biodiversidad que se pretende conservar está fundada sobre la diversidad étnica y cultural; y que las luchas de los pueblos por sus territorios es la defensa mas antigua de tales recursos.

II

Los pueblos indios del continente han mantenido y mantienen una larga lucha por preservar sus medios de vida, incluyendo junto a la lengua, al saber propio, a las formas organizativas: los recursos naturales. De tal manera es unitaria su cultura, que esta defensa de los recursos no aparece - y quizá no existe - diferenciada de la defensa de todo aquello que constituye su vida en tanto pueblo, y está imbricada íntimamente en todas sus acciones: desde la reiteración pacífica de sus prácticas, hasta la movilización violenta pára imponerlas o conservarlas. Las luchas de los indios aceptan muchas lecturas; una de ellas desde la perspectiva de sus esfuerzos por preservar los recursos naturales.

Una primera forma de lucha, elemental, tiende a asegurar el acceso no disputado al territorio y los recursos accesorios a él (bosques, pastos naturales, agua, etcétera). Al respecto, cabe distinguir, por lo menos, dos escenarios en los cuales esta lucha se da: en las tierras de vocación y uso agrícola tradicional, y en los bosques tropicales. En el primero se generaliza tempranamente el régimen de propiedad y las disputas se plantean en el marco de la legalidad; en el segundo se desarrolla un régimen de ocupación simple y las competencias se resuelven por la vía de la violencia. Las tierras de propiedad han dado origen a incontables procesos de despojo y reclamación que esporádicamente conducen a alzamientos indígenas, represión oficial y nuevamente a negociaciones judiciales; las "tierras de nadie", como las califican los códigos civiles latinoamericanos, son hasta ahora teatro de escaramuzas protagonizadas por "cazadores de cabezas" contra intrusos, y cruentas masacres de exterminio contra los indios.

La legislación agraria viene desarrollándose para regularizar las relaciones en el escenario de las tierras de propriedad. Las dotaciones a comunidades durante la colonia, los decretos de desamortización en el primer siglo de las repúblicas y las reformas agrarias en los últimos cincuenta años, han intentado proveer un marco para el ejercicio de la defensa de las tierras y otros recursos. Los indígenas, y los campesinos en general, se han atrincherado en los recursos legales y han luchado por ampliarlos mediante presión no violenta. Algunos avances se deben directamente a sus luchas, otros a los imperativos de modernización del sistema de

explotación. La disputa por la aplicación y por la ampliación de la legislación no ha terminado, pero en algunos casos pareciera una vía agotada, que está orillando las soluciones, una vez más, a la violencia.

En las tierras tropicales el desarrollo legal e institucional es más limitado. Hasta principios del presente siglo fueron consideradas baldías y sujetas a un régimen de descubrimiento. Al ocuparse de ellas el Estado las convirtió en suyas y las concedió bajo condiciones mínimas. Cuando las da en concesión (para colonización individual o explotación masiva de recursos) estallan conflictos con los ocupantes anteriores de esos territorios, que primero se retiran pero más tarde asumen la defensa beligerante. A continuación se precipitan ensayos de legalización de la ocupación nativa bajo esquemas modificados del régimen de propiedad (reservas, resguardos, interdicciones) que, ni contienen la penetración de colonos, mineros, compañias explotadoras de madera o plantadoras de palma, ni resuelvem inteligentemente las necesidades de una ocupación extensiva y discreta de la población original. En este escenario la lucha es, precisamente, contra la legalidad y por un estatuto distinto, territorial, autonómico. Según los casos, reproduce las situaciones de violencia, o se convierte en una demanda política, que por lo pronto transgrede la constitucionalidad imperante.

Más antiguas, las organizaciones indígenas de las tierras agrícolas y de propiedad han desarrollado una enorme capacidad para defender sus recursos, ampliarlos y desarrollar otras estrategias para sobrevivir, dentro del marco legal. Más nuevas y combativas, las organizaciones indígenas de la cuenca amazónica están dando ahora mismo una lucha intensa por preservar sus territorios de supervivencia, que va desde el rechazo militar a la penetración extraña, hasta la disputa del derecho que se atribuye el Estado para disponer de los recursos y repartirlos.

Una segunda manera de contribuir a la preservación de los recursos naturales se basa en el mantenimiento y recuperación de formas tradicionales de su ocupación y aprovechamiento. Estas formas tienen relación con un complejo cultural muy vasto en el cual se incluyen, no únicamente las alternativas tecnológicas, sino el saber acerca de la naturaleza, sus relaciones intrínsecas y con la sociedad, y la adopción de las opciones organizativas y demográficas adecuadas. Este complejo se presenta y existe como una unidad de comprensión y de comportamiento, que los antropólogos aíslan epistemológicamente cuando estudian las estructuras de parentesco, los sistemas de representación, las maneras de construir y denominar taxonomías o la naturaleza de la economía y la política; pero que aloja en su unidad de sentido, precisamente, sus virtudes para el manejo adecuado del medio y, al mismo tiempo, de los recursos humanos disponibles.

Los estudiosos han documentado ampliamente estos procedimientos culturales históricos y contemporáneos. Ocupan un destacado lugar en la etnología americana (y principalmente amerindia), las consideraciones sobre el manejo de los sistemas de control de inundaciones y de riego en el caso de Mesoamérica (Palerm,

Wolf, Kelly), y la existencia de formas sociales y políticas correspondientes (Kirchoff, Carrasco); los estudios sobre la maximización de las alternativas de combinación de recursos en varios pisos o niveles productivos en los Andes (Murra, Ochoa); y la inagotable capacidad de adaptación ecológica de las sociedades amazónicas a los ecotipos ribereño e interfluvial (Megers, Evans).

Más recientemente estos postulados han sido criticados y completados con nuevos puntos de vista sobre el desarrollo de modelos pluriecológicos basados en una sabia dispersión y colocación de los recursos humanos (Golte) y la puesta en vigor de formas de intercambio fundadas en la reciprocidad (Mayer, Fonseca); la existencia de medios de representación de las relaciones sociales y de las relaciones ecológicas altamente comprensivas y sintéticas en universos tan exuberantes como las selvas del Orinoco y el Amazonas (Jara, Descolá), a las que se corresponden además sistemas clasificatorios precisos y claros (Taylor), que contienen un saber astronómico y meteorológico fundamentalmente pragmático (Magaña). Todas las formas de ejercicio de la antropologia contemporánea, incluyendo la arqueología social y la lingüística, están descubriendo cada día nuevas y asombrosas maneras de armonizar la vida social con la naturaleza, destacando que éstas no son - como sugirieron los primeros estudios y aún lo comprenden algunos movimientos sociales - un mero fenómeno de adaptación pasiva a los constreñimientos ecológicos, sino una acción cultural consciente, deliberada, capaz de repetirse y transformarse; un acto continuo de domesticación del medio y del control de la sociedad y la cultura.

Las culturas indígenas andinas y mesoamericanas, pese a las perturbaciones y limitaciones que les ha impuesto medio milenio de dominación colonial y neocolonial, conservan prácticas agroganaderas que minimizan el deterioro del medio de vida prolongando su utilidad hasta límites críticos, maximizando las posibilidades de aplicación del trabajo colectivo armado en una tupida red de parentesco real y ritual que hace posible la solidaridad interfamiliar y comunal. Estas culturas han sabido adoptar, selectiva y experimentalmente, los aportes tecnológicos (como conocimientos, instrumentos y técnicas) de las metrópolis para generar sistemas que tienden cada vez más a recuperar el equilibrio entre la intensidad de la explotación de los recursos y las necesidades socialmente establecidas de supervivencia. Parte de estas estrategias comprende, cada vez más definitivamente, el control del crecimiento y la composición poblacional, mediante autorregulación y expulsión migratoria. No es nuestra intención pasar por alto las limitaciones y eventuales defectos de estos sistemas, que sí existen y son un factor crítico en el deterioro de los recursos, pero, para el caso de las tierras altas, es preciso subrayar que son las constricciones sociales acumuladas las que han orillado y orillan a estos pueblos a ejercer formas de ocupación que deterioran definitivamente el medio. Deben destacarse: la siempre creciente reducción del espacio de reproducción física y social desencadenada por la concentración de la propiedad; la presión ejercida por los programas y proyectos de desarrollo unilateralmente definidos e impuestos como condición para acceder al crédito, la

asistencia técnica y los servicios públicos; y la satanización de las prácticas indígenas en todos los órdenes tecnológicos (la producción, la atención sanitaria, la socialización, etcétera).

Los indios de la foresta tropical son protagonistas de una forma de ocupación tan sutilmente adecuada a la extrema fragilidad del ecotipo amazónico, que han logrado sobrevivir por siglos sin lastimarlo y, a decir de los etnólogos que han documentado su pasado reciente, lo han hecho en condiciones de abundancia. Ajustes precisos entre las formas de organización del grupo doméstico, distribución sexual del trabajo, interrelación con otros grupos y altos conocimientos sobre el comportamiento de la naturaleza: el agua, la tierra, la vegetación y la fauna, han hecho posible esta maravilla. Al contrario que los agricultores y pastores de la sierra y de las punas, las perturbaciones a la sociedad o al medio han afectado y afectan a estos pueblos de horticultores itinerantes, cazadores y recolectores. La reducción de los asentamientos en aldeas, práctica privilegiada por las misiones religiosas (católicas y protestantes); la introducción de ganadería; el desarrollo de plantaciones y explotaciones forestales; y la introducción de instrumentos de devastación intensiva, no han podido ser fácilmente asimiladas ni contrarrestadas por estos pueblos. La incomprensión del carácter extensivo de su uso del medio, de la fragilidad de éste y de la bondad relativa de sus pocas conocidas prácticas, son factores más altamente destructivos que los eventuales errores tecnológicos o excesos en los que pudieron incurrir los mismos indios.

Lo mencionado en relación con la producción alimentaria puede bien generalizarse para los demás órdenes del uso cultural del medio, comprendido ahora bajo denominaciones como la etnobiología, la etnomedicina, la etnoastronomía, etcétera.

Las luchas de los pueblos indios por preservar sus medios de vida no se limitan a la resistencia. En los últimos años están adoptando formas activas, a manera de propuestas de un desarrollo alternativo. Las organizaciones de las naciones o pueblos indios, en niveles provinciales, nacionales y regionales, incluyen - en sus plataformas programáticas y en sus demandas - la necesidad de generar y legitimar principios y metodologías de desarrollo socio-cultural y económico que se fundamenten en el reconocimiento y el impulso de las estrategias tradicionales, históricamente probadas por su éxito para conservar el medio y asegurar la vida social. Como todo en su cultura, este planteamiento conserva unidad con todo un amplio conjunto de reivindicaciones, del cual emerge, que implican por igual a la lengua, el derecho de autorregularse, el reconocimiento de sus sistemas de autoridad, etcétera. Se ha llamado a esta alternativa etnodesarrollo y en algunos foros no indígenas se ha aceptado como propuesta, pero sin comprometer por cierto el cumplimiento de otras condiciones que le son indispensables: autodeterminación, independencia, democracia real y participación.

Aún no existe un concepto unívoco de lo que puede comprenderse por etnodesarrollo; en realidad se aplica a varios experimentos que se llevan a cabo en

diversos lugares del continente y que tienen en común buscar un mejor ajuste entre las características culturales de los pueblos, el medio que ocupan y su promoción integral. Es posible que en el futuro estos experimentos se multipliquen en una constelación de micro-modelos alternativos cuya síntesis dé como resultado el aparecimiento de nuevos caminos para asegurar el desarrollo de las naciones sin negar la diversidad de los pueblos que la constituyen.

III

Las oposiciones señaladas al principio tienen su origen en múltiples causas relacionadas con el carácter de las formaciones sociales nacionales y con la correlación de fuerzas económicas y políticas a nivel mundial. Estas últimas están cambiando ahora mismo y se manifiestan favorables a la adopción de un nuevo concepto de desarrollo, ecológicamente viable. Las naciones del continente sin embargo, celosas de su soberanía, se resisten a aceptar restricciones sobre el uso que hagan de sus recursos potenciales.

Desde el punto de vista de los pueblos indígenas se abre otro frente crítico para los modelos de desarrollo que se han impulsado hasta ahora: el movimiento de los pueblos por preservar la identidad de sus modos de vida y construirse un destino acorde con sus intereses en tanto pueblos diferenciados, se opone a la generalización de un solo modelo y reclama el respeto de la pluralidad.

En estas circunstancias cabe proponer que uno de los principios básicos de un nuevo esquema de desarrollo social debe arrancar de la aceptación de la pluralidad étnica y cultural, de la cual los pueblos indígenas son la expresión más cabal; y que esta aceptación implica a la vez reconocer que hay varias formas de llevar adelante la relación sociedad-naturaleza, algunas de las cuales - entre las que se encuentran las formas indígenas - son más adecuadas para conservar y fomentar la biodiversidad y deben ser fomentadas.

Ahora bien, la realización de este principio no puede darse como un hecho aislado. Es parte de un conjunto más amplio que compromete toda la relación entre la nación y los pueblos que la conforman; relación que debe ser modificada para dar paso a un nuevo horizonte de desarrollo.

Un ejercicio reciente de análisis de los derechos de los pueblos indígenas, conducido por el Instituto Interamericano de Derechos Humanos, ha sintetizado las siguientes condiciones, o derechos, que hace falta garantizar para modificar esa relación:

- el derecho de los pueblos a ser reconocidos como tales, esto es como entidades sociales y políticas, con derechos y obligaciones específicos dentro del Estado. Y, por tanto, a que el Estado se organice a sí mismo como una entidad pluriétnica;

- el derecho a recuperar, mantener y ampliar el control sobre los recursos necesarios para su vida, principalmente sobre sus tierras y territorios, entendido este último como el espacio total de su vida como pueblos;

- el derecho al desarrollo material y cultural propios; a participar de los beneficios de desarrollo nacional; y a tomar parte en la conducción del destino de la nación;

- el derecho a un conjunto de condiciones jurídicas y políticas que hagan posibles y duraderos los derechos antes mencionados; incluyendo las transformaciones necesarias a la democracia para alcanzar un sistema de representación de la pluralidad y de ejercicio del poder.

Degradação Social e Ambiental: Garimpo e Narcotráfico nos Países Amazônicos

ARGEMIRO PROCÓPIO FILHO

Da família das Eritraxiláceas, antes de ter recebido o nome erythroxylum Cataractum, ser classificada pelos botânicos e estudiosos da flora, os indígenas da região amazônica já conheciam esta planta como ipadú. Este é um nome proveniente da língua dos índios nheengatú. A mesma planta é apelidada de patú no idioma dos tukanos. No Alto Rio Negro os tukanos e nheengatús fazem até hoje suas tradicionais roças e plantios do ipadú. Os civilizados as chamam de plantios de coca.

Terminada a colheita das folhas do mencionado arbusto, estas são deixadas secar para finalmente serem torradas em panela especial denominada "patu axteríto". Após isso, são misturadas com folhas de outra espécie, a embaúba (Cecropia). Moídas juntas se transformam em finíssimo pó, tão apreciado que recebe um recipiente fabricado especificamente para guardá-lo. É o chamado "patú ahuró", ou seja, sacola para o ipadú.

Depois de bem socadas, o ritual da aspiração do pó das folhas exige outros instrumentos. Finos ossos de garças ou canudos de taquara destacam-se dentre os usualmente empregados.

Outros grupos indígenas, os makús por exemplo, fazem pequenas bolas de folhas do ipadú e as chupam vagarosamente. É dito por estes povos que o ipadú revigora, contribui para perder a fome. Ajuda na arte da caça e da pesca aguçando os sentidos. Os seringueiros no passado fizeram uso dele para enfrentar o difícil trabalho na selva. Os caboclos igualmente empregam o ipadú, seja para matar a fome em épocas de escassez alimentar, seja como estimulante para contrabalançar a fadiga e fraqueza. Esta é mais uma prova que a utilização do ipadú, o menos desconhecido entre as centenas e centenas de espécies alucinógenas existentes na

floresta amazônica, não esteve limitado apenas aos indígenas. Quase todos os grupos humanos que vivem do extrativismo vegetal na floresta, há dezenas e dezenas de anos, esporadicamente aproveitam-se das virtudes medicinais da coca e de outras plantas alucinógenas para variados fins.

A ayhauasca por exemplo, feita com a fervura misturada do cipó jagube *(banisteriopsis Caapi)* com a folha chacrona *(psychtria Viridis)* é usada em cerimônias de seitas religiosas espalhadas pelo Brasil. De poder alucinógeno tão ou mais potente que a coca, este chá foi consumido nas primeiras décadas do século, no Estado do Acre. Pelo poder psicodislético que dizem conter é respeitosamente bebido em rituais de seitas religiosas como as do Santo Daime e da União Vegetal. Seus adeptos criticados ou perseguidos por usarem tal alucinógeno nos rituais se defedem provando que outras igrejas fazem o mesmo. Citam a Igreja Católica que usa a droga do álcool sob a forma de vinho na liturgia da consagração de suas missas.(1)

A partir dos anos 60, passa a ser quase rotina nas pesquisas de bom número de professores e cientistas a descrição do emprego de ervas como excitantes e entorpecentes entre os indígenas, seja no seu dia a dia, seja nos seus rituais sagrados. Tal curiosidade científica, do século passado aos dias atuais, soube ser acompanhada por imenso número de pesquisas botânicas patrocinadas por universidades, grandes indústrias ou laboratórios químico-farmacológicos, estes últimos tradicionais receptores do contrabando de espécies botânicas. A história da Hevea Brasiliensis, conhecida como seringueira, está na memória de todos.

No início dos anos 70, com a contribuição do próprio serviço de inteligência norte-americano foram mapeadas as regiões amazônicas, onde os indígenas comumente utilizam plantas alucinógenas. Hoje a fama dos seus efeitos ultrapassa a fronteira da floresta e dos grupos ditos civilizados que se interessavam por elas. No passado eles eram constituídos principalmente por etnólogos, botânicos, antropólogos e missionários católicos. Notadamente, a estes últimos não se pode roubar o mérito da profunda e rigorosa condenação do uso de tais plantas. Além do enérgico castigo imposto por estes aos tradicionais usuários, drogas alucinógenas foram sempre tratadas pela Igreja como sinal de pecado. São tidas como coisas do diabo, decadência moral dos povos primitivos, degradação da família, coisas de orgia que "vicia os indivíduos e fazem seus filhos nascerem fracos, apatetados e tarados".(2)

Do ciclo das drogas do sertão, século XVII, quando se inicia a pilhagem da floresta amazônica aos tempos atuais, a evasão de riquezas continua nos mesmos caminhos mas sob múltiplas e renovadas formas. O difícil de aceitar é a não

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(1) Exposição do jurista Domingos Bernardo Guimarães na 43a. Reunião Anual da Sociedade Brasileira para o Progresso da Ciência. Universidade Federal do Rio de Janeiro, 16.7.1991.

(2) BRUSSI, Alves da Silva, Alcionilio, *A Civilização Indígena dos Uaupés*. Roma, Libreria Ateneol Salesiano, 1977, págs. 208/209.

divulgação do fato de que o contrabando - fatalidade ou não do destino - segue com fidelidade os passos dos negócios inescrupulosos de poderosos grupos econômicos que não receiam destruir a natureza a favor do lucro fácil. Cresce à sombra de contrabandos de minerais e produtos agrícolas que fazem a sorte e a fortuna de classes nos Estados Unidos da América, na Europa e entre as elites corruptas latino-americanas a estes acopladas. Para comprovar esta afirmativa vejamos os seguintes exemplos: na Colômbia a cocaína seguiu o caminho do contrabando de esmeraldas. No Paraguai, a máfia que assassina camioneiros e age ligada ao contrabando de soja e do café protege os traficantes e vice-versa. No Brasil, a ampliação da produção e do tráfico na Amazônia Ocidental tem suas ligações com o contrabando de cassiterita que do Estado de Rondônia é levado para a Bolívia via Cáceres no Mato Grosso. Segundo o Sindicato dos Trabalhadores Extrativistas de Rondônia, 320 toneladas de cassiterita produzidas mensalmente são contrabandeadas para os Estados Unidos e Europa via Bolívia.(3)

O Brasil é o maior produtor mineral de pedras coradas (pedras preciosas, exceto o diamante). O Departamento Nacional de Produção Mineral estima que as pedras brasileiras são responsáveis por 1/4 do comércio mundial. As suas transações são feitas, em quase totalidade, de forma clandestina. A rota é precisamente a mesma da cocaína, ou seja, São Paulo, Rio de Janeiro, Miami, Paris, Frankfurt e Amsterdam, entre outras.

Apesar do Brasil ser oficialmente o sexto maior produtor mundial de ouro - sua produção em 1988 foi estimada em 112 toneladas -, o Uruguai ficou como o maior exportador na América Latina, mesmo não tendo em seu território sequer uma única mina. Montevidéu é tida atualmente como grande centro de lavagem de dinheiro ilícito de traficantes. O estuário do Prata, caminho para o contrabando da prata das minas de Potosi, na atualidade é vital para a saída da cocaína produzida no Peru, pela mesma rota dos tempos coloniais.

Falaremos um pouco a seguir da chamada "Rota Amazônica", importante como ponto de convergência do contrabando de múltiplos produtos vegetais e minerais. Por aí é que passam tanto o ouro, madeiras nobres, essências raras, todas contrabandeadas ao lado da pasta ou droga refinada. Alcançam os consumidores através de rotas que se alteram; sucessivamente são ativadas e desativadas, chegando ao mercado consumidor pelas portas da Califórnia, Flórida, Espanha e Itália, entre outros. É igualmente por elas que confortavelmente entra o mercúrio proveniente do México e da Alemanha utilizado nos garimpos. Isso além de toneladas e toneladas do éter e da acetona empregadas no refino da coca que camuflados chegam aos portos marítimos colombianos, equatorianos e peruanos, espalhando-se depois pela ampla malha fluvial do lado brasileiro.

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(3) GUEDES, Yodon. "Rondônia faliu, origem governo e empresários". *In: Folha de São Paulo*, 6.8.91.

A mineração do ouro, apenas na Amazônia brasileira, chegou a ocupar cerca de um milhão de homens. Noutras palavras, número maior de emprego que todas as multinacionais somadas operando em todas as regiões do país. Igualmente a cocaína ocupa e remunera sensivelmente melhor a mão-de-obra utilizada em sua produção e distribuição, não importa em que fase. Verifica-se então o quanto a miséria social latino-americana amparada por negócios ilegais com os países do norte contribui para com a degradação ecológica.

A mão-de-obra liberada pela crise econômica atende espetacularmente o recrutamento exigido pela expansão da coca na Amazônia. Aí a falta de tecnologia moderna, os métodos rudimentares e pouco eficientes empregados nos garimpos contribuem para o desperdício e rápido esgotamento das reservas. Presume-se que o melhor da mão-de-obra liberada dos garimpos em decadência esteja sendo usada em alguma das etapas do caminho das drogas. As drogas espalhadas pelo Rio Madeira, principalmente as concentradas nas proximidades da Cachoeira do Theotônio situada a poucos quilômetros de Porto Velho, capital do Estado de Rondônia, chegaram a produzir nos anos 80 entre dois e três quilos de ouro por dia. Hoje só com esforço e sorte conseguem extrair um quilo por mês. Daí a falência generalizada do garimpo fluvial nesta região onde funcionam ainda aproximadamente 1000 dragas, ou seja, 1/6 do número oficialmente registrado. Apesar de tudo, o movimento continua no Rio Madeira com visível quantidade de dragas operando unicamente como fachada para a lavagem de dólares obtidos pelos narcotraficantes. É graças às migalhas e pequenas sobras de cocaína despejadas em Rondônia que vive parte da sua população expulsa dos garimpos e das zonas rurais. Da mesma forma os desempregados das predatórias indústrias madeireiras agora controladas pelo IBAMA. As mesmas que quando fiscalizadas não conseguem sobreviver levando seus trabalhadores ao atrativo comércio das drogas.

Expressamente proibido por lei, dados seus efeitos altamente poluentes e pela degradação ambiental que causa - além de fazer enorme número de vítimas fatais -, o mercúrio, como se escreveu logo acima, entra contrabandeado na Amazônia com provável apoio dos traficantes de cocaína. Sua distribuição parece obedecer à estrutura que mantém a entrega regular do éter e da acetona.

É importante salientar que o Brasil fabrica éter e a acetona em indústrias químicas multinacionais instaladas no Sudeste. O fato desta produção estar sendo rigorosamente fiscalizada, controlada pelos agentes da poderosa Drug Enforcement Agency dificulta, impede no momento que o éter e a acetona utilizem os caminhos da "Rota Caipira". Esta é a rota que liga o triângulo das cidades desenvolvidas do país, como São Paulo, Rio de Janeiro, Belo Horizonte à famosa Tabatinga, nas proximidades do Brasil com a Colômbia. A posição estratégica de Tabatinga aproximando e integrando a Colômbia, Peru e Brasil inicialmente era uma excelente base para o narcotráfico. Tal fato terminou por concentrar ali um gigantesco ponto de vigilância policial e repressão. Conhecida por todos, felizes

ficam os grandes traficantes em ver Tabatinga transformada em "boi de piranha". Há tempos que ela está nas mãos dos "pombos", os pequenos traficantes.

Os barões da droga sabem com destreza manipular velhas e novas rotas numa quase reedição histórica das entradas e bandeiras. Entre as novas destacam-se as pistas e campos de pouso clandestinas ou ainda em uso por garimpeiros, espalhadas pela Amazônia. As situadas nas reservas indígenas são administradas pelos próprios índios que sabem cobrar dinheiro por seu uso e boa manutenção. Tudo isto dentro de códigos primitivos que a informática e os computadores das agências de repressão levarão décadas para decifrar. Além dos hidroaviões que dispensam campos de pouso, a infraestrutura de latifúndios, não só na Amazônia, mas inclusive no Sul, Sudoeste e Centro-Oeste do Brasil e em países como o Paraguai, Argentina e Uruguai, com freqüência é utilizada pelos narcotraficantes. Aos seus empregados mal remunerados pouco importa que as pistas feitas para os pequenos aviões dos fazendeiros sejam tranqüilamente usadas em trocas de gorjetas ou presentes. Geralmente são quinquilharias vistosas como roupas, whisky ou eletrodomésticos vendidos nas zonas francas. *Mutatis mutandis*, as mesmas bugigangas que os portugueses presenteavam os indígenas quando precisavam de seus favores. Acostumados aos baixos salários, fala-se que por serem os peões brasileiros barateiros e menos exigentes que os vizinhos eles se transformam num incentivo a mais para o deslocamento do narcotráfico em direção às nossas fronteiras.

Em casos de fadiga, necessidade de combustível ou forçados por condições meteorológicas, os pilotos pernoitam e lá tomam refeições; às vezes ficam estabelecidos laços de amizade com famílias locais, terminando inclusive em "casos de amor", casamentos e boa sociabilidade! Para complicar o quadro, a crise econômica que abate sobre o país, em parte em decorrência das pressões internacionais para o pagamento dos pesados juros da dívida externa, não permite a modernização de sua força aérea, nem formação e contratação de pessoal especializado em ações contra o tráfico. Centenas de aviões da FAB deixam de voar por falta de peças de reposição ou simplesmente por causa da quota extremamente baixa de combustível à disposição. O sistema de radares para guardar o espaço aéreo brasileiro amazônico tampouco existe. Como no passado está a Amazônia desprotegida, à mercê do contrabando e da evasão de riquezas. Mas mesmo que tal pirataria aérea fosse por completo desmantelada, ela seria substituída de imediato pelos barcos de transporte e passageiros que cortam as águas dos rios amazônicos. Estes com maior facilidade e segurança conseguem transportar a droga. Dado seu elevado número, dada a fantástica e complexa rede fluvial criada pela natureza na Amazônia, e também o sucateamento das forças navais fluviais, apenas se forem azarentos e extremamente distraídos os traficantes poderão ser abordados através de ações militares ou de batidas policiais à moda clássica, do tipo das empreendidas pelo exército norte-americano na Bolívia, bem ao estilo das que foram mostradas no cinema e na TV. Daquelas que causam orgulho e rendem votos nos Estados Unidos

da América. Tudo isso ajuda a evidenciar a relatividade e fragilidade dos conceitos de soberania concernentes ao Terceiro Mundo. Lembram o estado da natureza, a lei da selva, reinantes nas relações internacionais tão bem descritos por Hobbes e sua réplica no universo do narcotráfico e dos problemas ecológicos.

Outros pontos técnicos a favor da produção de cocaína na Amazônia brasileira é que aí o ipadú, apesar das desvantagens de possuir um baixo teor de cocaína, isto é, de 0,45% contra 0,85% da boliviana e 0,60% da colombiana, fala-se que é extremamente resistente a pragas. O arbusto do ipadú nas plantações do lado brasileiro produz um volume consideravelmente maior de folhas. Permite aos seus produtores quatro colheitas anuais, enquanto que as plantações dos vizinhos, mesmo as peruanas, não dão mais que duas safras de folhas. Isto em parte se deve aos melhoramentos genéticos processados durante séculos pelas tribos indígenas do Alto Rio Negro, que inclusive transformaram o ipadú em espécie forte e resistente. Ainda hoje com muita eficiência fazem excelentes mudas com transplante de galhos. Cuidadas através do manejo tradicional, crescem vigorosas e sadias, talvez com força suficientes para a prometida futura guerra biológica das perigosas "pragas naturais" que os norte-americanos estudam para destruir por "métodos naturais" a coca na América Latina. É bem possível que esta tentativa seja a repetição de erros e desacertos nos combates e campanhas de erradicação da droga. Um exemplo recente de trabalho pouco eficiente foram as queimadas. As bombas incendiárias lançadas por aviões para destruir os pés de coca - obviamente sem consideração alguma com o meio ambiente - ao destruir as matas vizinhas dos plantios, sempre cercados de florestas, gratuitamente ampliaram as áreas de cultivo. Foi a felicidade dos plantadores, porque a fase do corte das grandes árvores, do desmatamento propriamente dito com o preparo do solo é a etapa mais cara dos plantios clandestinos. Comenta-se igualmente que incêndios provocados por bombas deixam farta quantidade de cinzas, que estas quando misturadas à terra se transformam em composto natural altamente nutritivo, especialmente benéfico para novas plantações de ipadú!

Sob o ponto de vista moral, ainda que plenamente justificadas a repressão e a destruição da malha que sustenta a produção dos tóxicos, sabe-se da constatada inoperância do seu caráter repressivo e policial. Parecem satisfazer uma opinião pública extremamente manipulável e mal-informada omitindo sistematicamente o porquê da produção da coca na América Latina, o porquê de seu consumo cada vez mais abrangente.

A degradação ambiental e a evasão de riquezas da Amazônia do passado colonial aos nossos dias se existe é porque foi amparada econômica e politicamente por grupos de dentro e de fora do país. Isso é repetido hoje na cena do narcotráfico. Todavia, se o entrelaço e conexões da droga não são denunciados é porque é este o lado da moeda que não interessa ser mostrado. As forças que amparam o narcotráfico estão sendo de tamanho perigo a ponto de serem mais nocivas para a sociedade em geral que a própria cocaína. A intimidade do narcotráfico com o

sistema financeiro internacional, seu poder de pressão na América Latina, seus acertos de conta terminam sempre em compromissos sujos. Mas apenas as cenas de violência policial chegam ao conhecimento público. São os massacres, assassinatos que se proliferam ao ponto de serem banalizados ou transformados em pratos banais do quotidiano. Nas cercanias do Rio de Janeiro, na chamada Baixada Fluminense, dados policiais contabilizaram 88 massacres em 1990, com 674 vítimas. A quantidade de jovens desempregados dos centros como Rio de Janeiro, São Paulo, Porto Alegre, Recife e outras cidades à procura do El Dourado da cocaína não cessa de crescer. Segundo pesquisa realizada em 1987 pela Escola Paulista de Medicina, nesse ano 21% dos estudantes brasileiros tinham usado droga. Dois anos depois, em 1989, a percentagem cresceu para 26%.

A caótica normatização elaborada pelo Poder Legislativo no que tange a processos estabelecidos contra os traficantes, associada ao fraco desempenho do Poder Judiciário, que paga altíssimos salários a seus juízes, via de regra contemplados com privilégios desconhecidos pela magistratura de países desenvolvidos, não barrou a corrupção ali reinante. Tampouco tem elucidado, diminuído ou imprimido eficiente vigor no combate aos crimes relacionados ao narcotráfico.

Inicialmente um simples roteiro ou ponto secundário no roteiro da droga, depois base para o refino da pasta e finalmente excelente espaço para as plantações em escala comercial do ipadú, a Amazônia brasileira de pouco entrou no negócio. Hoje ela é referência tão importante quanto Colômbia, Bolívia ou Peru no cenário das drogas. A novidade é que a cocaína produzida na Amazônia brasileira, porção crescente dela vem sendo consumida no país mesmo. Estudos sobre o perfil do viciado demonstram que há anos ela deixou de ser um hábito dos filhos da elite. Agora atinge camadas das classes médias e camadas da população de baixa renda, usuárias em geral da pasta base de coca, que é menos cara. O modismo, o mimetismo cultural que tem por máxima as premissas de que tudo do Primeiro Mundo é o melhor e deve ser imitado, os hábitos difundidos pelo turismo, cinema, TV, revistas, enfim, a abrangente propaganda simulada, tudo contribui para a disseminação do uso dos entorpecentes.

Tal fato leva à tese da deterioração do poder de controle por parte do Estado que por omissão termina enfraquecido frente a grandes grupos econômicos e de políticos indiretamente sustentados ou envolvidos com o narcotráfico.

Esta situação leva a outra discussão ainda tabu no Brasil: a da liberação, descriminalização do uso de drogas chamadas ilícitas. Seus defensores contam com forte argumento da descriminalização ser talvez o melhor e mais limpo caminho para um eficiente controle penal da comercialização ou tributação da sua produção e comércio.

Na Amazônia brasileira não obstante a forte tendência de queda das taxas de natalidade no país, por causa do processo migratório, sua população passou de

cinco para 17 milhões em apenas 20 anos, ou seja, de 1969 a 1989. O papel das áreas urbanas amazônicas brasileiras como entreposto internacional de cocaína, ao contrário do novo peso da região no processo de produção da droga, sofre visível e considerável redução. É a prova de que a cocaína proveniente dos outros países amazônicos, depois que o Brasil tornou-se produtor, não passa pelo país nas quantidades do passado. Entrepostos importantes de 1987 para cá são a Argentina, Paraguai e Uruguai. Tal realidade evidencia espetacular articulação do narcotráfico. Em termos de integração latino-americana, para o bem ou para o mal, em pouco tempo uniu, montou estratégias que em décadas de existência a ALALC, depois chamada de ALADI, jamais conseguiu estabelecer. Sem entrar no mérito moral das coisas, move e "integra" regiões das Américas.

A título de conclusão fica ressaltada a tese de que o narcotráfico na América Latina faz uso das antigas e tradicionais estruturas de corrupção. Seus caminhos, alguns estão montados desde o período colonial e continuamente são usados na evasão de riquezas e fuga de capitais. A averiguação desta argumentação pode ser comprovada em se analisando as rotas do narcotráfico, seus processos de comercialização, conexões, suas bases sociais e políticas. Do passado ao presente elas são substancialmente as mesmas. Resistem ao tempo e perdurarão até que termine a evasão das riquezas deste subcontinente para os países centrais. Nesta perspectiva, em prol da expansão do narcotráfico e da degradação ambiental na Amazônia brasileira existe a crise fomentada pelo pagamento dos altos juros da dívida externa e a injusta divisão internacional do trabalho. Vale dizer, os baixos salários e simbólicos preços pagos aos produtos agrícolas e aos minerais daquela região. É isso que leva os trabalhadores à miséria, contribuindo para o sucesso dos negócios das drogas. Reverter esta situação certamente abalará os pilares do sistema econômico em que a expansão do narcotráfico está assentada. Como se deduz então, as causas da prosperidade das drogas alucinógenas, além de profundas, têm ramificações complexas. Desmerecem a propalada e simplista afirmativa de que só haverá drogas enquanto existirem viciados, demanda, produtores e consumidores.

Por último lembramos que a inteligência controladora da cocaína na Amazônia nasceu transnacional, com todas as virtudes e pecados do processo histórico de acumulação do mundo ocidental cristão. Os bilhões de dólares aí movimentados, por si mesmos já dizem tudo. Expõem com crueldade a fragilidade escondida das sociedades do Primeiro Mundo. Fazem aproximar as contradições do relacionamento entre o centro e a periferia mundial. No caso específico da degradação ambiental e do narcotráfico nos países amazônicos a verdade histórica com seus exemplos faz relembrar fatos que não podem passar despercebidos.

PARTE / PART IV

INFORMES NACIONALES / NATIONAL REPORTS

- Informes Presentados en el Seminario / Reports Presented at the Seminar

- Informes Enviados al Seminario / Reports Forwarded to the Seminar

[Brasil:] Comentários sobre Direitos Humanos e Meio Ambiente

WASHINGTON PELUSO ALBINO DE SOUZA

1. BASES TEÓRICAS

O "meio ambiente" há de ser tomado como um dado de realidade fundamental para a própria concepção dos Direitos Humanos, pelo simples motivo de constituir a base material da vida humana. Por este motivo, não se pode dissociá-lo de nenhuma das manifestações dos Direitos Humanos tomados em sua integralidade: Civis, Políticos, Econômicos, Sociais e Culturais, sob pena de desvirtuamento de seu correto significado e de prejuízos insanáveis à vida dos indivíduos e das nações.

O comportamento milenar do homem em face da natureza, na medida em que dela se desintegrava como parcela de um todo, levou-o a dominá-la com a sua "tecnologia" predatória. Configurou-se uma espécie de "cultura" baseada na RAPINA como forma de "ocupação do solo" (Ratzel). Esta continuada e desregrada rapina das riquezas é que está a exigir medidas eficientes de contenção reclamadas e propaladas por uma plena convicção do sombrio futuro proveniente de sua continuidade, porém todos os expedientes anunciados ou empregados nesse sentido têm padecido da falta de real conscientização e de autêntica vontade política e econômica. Nem mesmo os tratados ou a legislação têm conseguido resultados positivos, como se pode verificar no Brasil. Resta apenas como hipótese provável e medida recomendável concentrar-se o problema no âmbito da educação para moldar-se o novo modelo cultural no tocante ao assunto.

No presente momento, o tema exige ainda mais estudo e meditação pois encontra-se ameaçado de desvirtuamento ante a tendência de vir a ser tratado pelos diversos governos segundo a ótica da "convergência das políticas econômica e ambiental" (depoimento de Mr. William Reilly, Diretor da EPA - *Environmental Protection Agency*, ao Senado dos Estados Unidos, divulgado pela Embaixada desse

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país no Brasil), a título de um "desenvolvimento sustentável", expressão atualmente na moda e com tanto brilho defendida e exposta neste evento, porém que continua requerendo conceito mais objetivo especialmente em face da realidade dos países indefesos ante a continuidade da exploração e da dominação dos industrializados.

2. ESTRATÉGIA

2.1. Diagnóstico

Especialmente nos países subdesenvolvidos e fornecedores de matéria prima, a degradação ambiental constitui prática econômica corrente, quer pelas extrações minerais e florestais, quer pela atividade agrícola-pecuária baseada no uso indiscriminado de agrotóxicos e de produtos poluentes, quer pela própria transferência de indústrias poluidoras desativadas nos países de origem, quer pelos anunciados projetos de descarga do lixo atômico, e assim por diante.

A consequência imediata de tal procedimento está na vida degradada das respectivas populações historicamente empobrecidas e exploradas até às raias da escravidão, culturalmente descaracterizadas, vivenciando valores cada vez mais negativos e que se traduzem pelo aumento da miséria com as complementações do crescimento da violência e da criminalidade, das doenças do desconforto e da desassistência, do agravamento dos problemas do menor e do idoso, traduzidos todos estes pelo desemprego decorrente das políticas econômicas recessivas e da imposição do único objetivo de lucro a qualquer preço, em completo repúdio pelos mais simples e fundamentais Direitos Humanos, que são o direito à vida, à saúde e à dignidade da pessoa.

2.2. Precariedade das Medidas Legais

Não basta toda uma arquitetura legal, mesmo que bem estruturada para minorar a angustiante situação superficialmente diagnosticada. O exemplo brasileiro comprova tal afirmativa. Os compromissos inspirados na Conferência de Estocolmo, de 1972, tiveram seu cumprimento desmentido pela ação dos satélites que revelaram ao mundo os enormes desmatamentos da Floresta Amazônica, em proporções alarmantes e discutidas pela Ordem dos Advogados do Brasil, que lhe dedicou a Carta de Belém, como resultado do "Simpósio Internacional sobre Direito Ambiental e a Questão Amazônica" (1989). Entretanto, situações igualmente graves configuram-se no Pantanal Matogrossense, em toda a vastidão da Mata Atlântica, na vasta região do cerrado e do nordeste, nas jazidas minerais, nas atividades agrícolas e pecuárias e nas concentrações urbanas.

Entretanto, o Brasil conta com uma legislação especialmente voltada para o tema, sem que se tenha chegado a resultados positivos ou sequer à sua satisfatória

aplicação. Dúvidas e temas teóricos aqui debatidos, ali se encontram formalmente abordados, como a "relação jurídica" com seus sujeitos e objeto, institutos de aplicação e execução, e assim por diante. Dentre outros, citaremos os seguintes diplomas legais: a Constituição Federal de 1988, com o Capítulo VIII dedicado ao "Meio Ambiente" e situado no Título VIII, "Da Ordem Social". Outros dispositivos encontram-se no Título "Da Ordem Econômica" (art. 170 (VI) - defesa do meio ambiente) ou esparsos pelos demais: Lei 6. 902, de 1981, sobre Estações Ecológicas e Áreas de Proteção Ambiental; Lei 6. 938, de 1981, sobre Política Nacional e Sistema Nacional de Meio Ambiente; Lei 7. 737, de 1989, que criou o Instituto do Meio Ambiente e Recursos Renováveis - IBAMA; Lei 7. 802, de 1989, que trata do Controle de Agrotóxicos; Lei 7. 804, de 1989, que modifica dispositivo das Leis 6. 938, 7. 735 e 6. 902, e outros diplomas relacionados com o tema.

2.3. Necessidade de Medidas Objetivas

Está claramente configurada a situação da falta de vontade política das elites dirigentes, do comprometimento das autoridades com o interesse imediatista dos homens de negócios, conduzindo à consolidação de uma política neo-colonialista nas relações internacionais, combinada com um modelo oligárquico interno. Falta ao Judiciário o preparo e a convicção que levassem a uma atuação pronta e correta, como ao cidadão falta a consciência de que se trata de um direito fundamental seu à preservação ambiental.

Diante de um quadro desta natureza, somente o caminho de programas de educação bem elaborados e executados poderá levar à necessária conscientização das populações de que se trata de Direitos Humanos e como tal o problema do meio ambiente deve ser tratado. As chamadas medidas "objetivas", que na próxima Conferência do Rio de Janeiro certamente serão numerosas, correm o risco de se limitarem a discussões teóricas sem aplicação possível e a comemorações festivas de intenções mais ou menos sinceras.

Os advogados brasileiros sentiram a dificuldade de pôr em prática a própria legislação, quando falta mesmo àqueles que dela se utilizam profissionalmente, os ensinamentos que não lhes foram dados a respeito. Incluíram na Carta de Belém a introdução da disciplina "Direito Ambiental" nos currículos acadêmicos e recomendaram o patrocínio efetivo de medidas judiciais na aplicação da legislação, mas salientaram igualmente a importância da mobilização e organização da sociedade. Como se vê, o mais recomendável caminho, que é a educação e a informação nele baseada, torna-se indispensável para que a própria legislação, quando existente, receba o adequado tratamento. Torna-se necessário atacar o problema em sentido vertical, de modo a atingir todos os componentes da sociedade, e no sentido horizontal, ou seja, com a utilização de todos os modos de comunicação assim postos à disposição da correta conscientização.

3. CONCLUSÃO

A realidade do tema no Brasil revela que:

- Há de se partir do princípio de que a defesa do meio ambiente está intimamente ligada aos Direitos Humanos em sua expressão global: Civis, Políticos, Econômicos, Sociais e Culturais.

- É essencial que se conscientize toda a sociedade quanto à defesa do Meio Ambiente, sendo a educação o mais adequado caminho para tanto.

- Considera-se a educação, para efeito de meio ambiente, não somente a comunicação da informática teórica, mas também a sua aplicação a partir da ação governamental, passando ao comportamento individual, indo à atividade legislativa e à prática judiciária. No mesmo conceito inclui-se a possibilidade e a necessidade de adoção das modernas tecnologias que substituem as práticas degradantes.

- Campanhas educativas mobilizando a juventude estudantil, as entidades de classe patronais e de empregados, clubes e demais entidades que congreguem elementos reunidos por um objetivo comum, devem ser agregados a este movimento de caráter educativo.

- A ação predatória de interesses econômicos externos ou internos tem que ser impedida e para tanto o próprio conceito de "desenvolvimento sustentável" deverá oferecer tratamento específico para as "economias dominadas" ante a ação das "economias dominantes", ou seja, das áreas e dos países subdesenvolvidos em face dos interesses imediatos dos países desenvolvidos.

[Brazil:] Notes on Diffuse Interests

RUY RIBEIRO FRANCA

1. Diffuse or collective interests ("interesses difusos ou coletivos") have been increasingly highlighted in Brazil's post-1985 political and legal crosscurrents. It is a well-known fact that the old notion of "interest" has undergone deep transformations. Its progressive enlargement has led to a militant conception that there are vital values which belong primarily to the whole of the community or to large parts thereof - as distinct from strictly individual rights - and have accordingly to be dealt with by means of specific judicial remedies.

For instance, Law 8078/90 defines "diffuse interests or rights" as those such as are transindividual and indivisible and belong to indeterminate persons who happen to be linked together by circumstances of a factual character; and "collective interests or rights" the transindividual and indivisible ones to which are entitled such groups, categories or classes of persons that are bound to each other or to the opposing party by a basic legal connexion.

2. The idea is not exactly new. Roman Law had the "actiones populares" as an instrument to enforce compliance with general interests (Dig., 47, 23, 1), e.g. the "actio effusis et dejectis"; as far back as four hundred years ago Sweden contributed its celebrated ombudsman, first as the "drotsen" and from 1809 on in his present form as a nonjudicial organ to watch over public administration acts and to settle disputes on diffuse interest questions. Today other countries have adopted similar institutions, with a view to protecting said high priority collective interests.

3. What is properly new about diffuse interests (apart from specific questions of procedural legitimacy) such as they are understood nowadays is both the broader field covered by them and, for obvious reasons, the particular urgency that has been attached to their protection in the eighties and nineties. As a corollary, the concept of such interests has been drawn out to comprehend the wholesomeness of the atmosphere and of watercourses, the right to an unpolluted environment, to the safe disposal of waste materials, to the preservation of forests and fauna, to the protection of the oceans, to the forestalling of predatory exploitation of natural

resources by individuals and corporations, to consumers' rights and product liability, etc; summing up, the collective right to a good social and physical environment.

4. Politically, ecologists and other concerned citizens have been increasingly vocal on every social level. Legally, protection rules have been enacted to correspond to this new awareness. Protection activities have traditionally been entrusted a) to private citizens and organizations, mainly by means of class actions; b) to the "Ministério Público", roughly the state attorneys and prosecutors specifically in charge of environmental and human rights issues, as well as of defending the legal order and the basic social and individual inalienable rights, and c) to the ombudsman or his functional equivalent, an elected official generally answerable to the country's parliament. (See Camargo Ferraz et al., *"A ação civil pública e a tutela jurisdicional dos interesses difusos"* - Saraiva Publishers - S. Paulo - Brazil - 1984).

5. In Brazil, according to the relevant provisions of the 1988 Federal Constitution, tutelage of diffuse/collective interests has been accorded to the Ministério Público and to private citizens and associations as well.

In a somewhat cursory view:

- Article 5, LXXIII grants the private citizen the right of filing the so-called "popular action" in order, among other aims, to annul acts found to be environmentally damaging;

- Article 129 - The Ministério Público have among their duties, that of promoting the *civil public action*, aiming at protecting the social and public patrimony, the environment and other diffuse/collective interests;

- Article 225 - (On the environment) - This article provides that everyone is entitled to an ecologically balanced environment, which is deemed to be a common property of all and essential to a healthy life; accordingly, public authorities and the community are bound to defend and preserve it for the present and the future generations. Its paragraphs set down the obligations incumbent upon government organs in order to secure those rights, such as:

I - preserving and restoring all basic ecological systems and providing for an ecologically sound handling of species and eco-systems;

II - ...

III - defining in all the states those territorial spaces and their resources which are in need of special protection, all alterations to be made exclusively according to the law, and banning whatever exploitation activities that might jeopardize the integrity of the elements that were originally the reason of that protection;

IV - performing mandatory previous studies on environmental impact whenever the setting-up of a potentially hazardous enterprise is intended;

V - controlling production, trade and the employment of techniques, methods and materials hazardous to life, quality of life and environment;

VI - promoting ecologically-oriented education on every level;

VII - protecting fauna and flora, etc.

It should be emphasized that environmentally noxious activities make offenders (whether individuals or corporations) liable to criminal, administrative and civil sanctions (§ 3rd.); that the Amazon Rain Forest, the Atlantic Forest and their resources are under special protection as national assets (§ 4th.), etc.

Aboriginals have a special chapter (Ch. VIII) for their rights both as individuals and as communities.

6. *The public civil action*

The "ação civil pública" (public civil action) has noticeably been on the increase in Brazil, ever since its inception with Law 7347, of July, 1985 (with some alterations due to Law 8078, September 09, 1990).

This law provides for civil-liability actions resulting from disregard of consumers' rights and from damages inflicted on the environment and on assets and rights of artistic, aesthetic, historical, touristic and scenic, value.

The action's venue is the place where the damage has occurred.

The Ministério Público, the Union, the states and townships ("municípios") are entitled to bring the action against offenders.

The same right is extended to autarchies, public corporations, foundations, mixed economy companies (quasi-public corporations), and civil associations, provided the latter have been in existence for at least one year and have among its institutional aims the protection of the environment, of consumers' rights, artistic and cultural resources, or any other diffuse/collective interests. In some cases (manifest social interest issuing either from the characteristics of the damages or from the importance of the interests in need of protection) the one-year prerequisite may be dispensed with by the judge.

Defendants (offenders) may be collectivities, communities, unincorporated partnerships, physical or legal persons, whether public or private, foreign or national, which may be responsible for actual or potential damage to the interests protected.

Any person can bring notice to the Ministério Público of facts falling under the scope of the civil action. The Ministério Público can also preside over the "inquérito civil" (civil inquiry).

As a brief reference to procedural norms: the judge may issue a preliminary injunction to the effect that the defendant shall abstain from practising the allegedly damaging act. The final ruling may impose both financial compensations for damages sustained and specific obligations to be carried out by the defendant (who in this case must either refrain from acting or take active steps in order to restore

the pristine conditions of the damaged assets) or by third parties, should the defendant fail to comply with the judicial order. In this case the latter shall meet all costs and expenditures. The sentence has "erga omnes" effects, and in some cases "ultra partes" effects (alterations brought about by article 117 of Law 8078/90). The monies to be paid by the defendants are to be delivered to a special government fund for the restoration of the damaged resources.

Law 7347 is therefore an important instrument to curtail the excesses of economic units and groups unmindful of their public and environmental responsibilities.

7. The present report is, of course, a very abridged overview of the available legal instruments for the advancement of inalienable collective/diffuse rights.

However, there is still left some appreciable ground to be covered in order to make them generally effective. To help taking those further and necessary steps, NGOs, are sorely in need of financial support and expertise to enable them to attain their aims. For instance, legal and practical improvements are urgently needed to face the most urgent collective rights task of all in contemporary Brazil, namely the immediate assistance to destitute children, in the form of adequate sheltering, food, health assistance, education and protection from bodily, emotional and moral harm. A growing number of citizens have been engaging themselves in finding practical answers to the children's predicament.

O Meio Ambiente, a Questão Social e o Nordeste Brasileiro

RICARDO JOSÉ DA COSTA PINTO NETO

I - Palavra Prévia

Creio que num encontro deste nível, com a presença de especialistas de excelência das Américas e da Europa, cabe uma reflexão mais cuidadosa sobre o Brasil na relação Direitos Humanos e Meio Ambiente.

Ao estrangeiro tem se revelado difícil a compreensão dos diversos brasis que se encontram dentro do Brasil, o que muitas vezes impede de perceber serem múltiplos os problemas vividos no país quanto ao Meio Ambiente e consequentemente refletindo nos Direitos Humanos.

É preciso atentar para o fato de que ao se falar em problemas ambientais brasileiros não significa restringir o tema à floresta amazônica. A degradação ambiental envolve, também, o pantanal matogrossense, a mata atlântica, os manguezais nordestinos, os grandes rios nacionais e o ar que se respira em determinadas áreas do território do país.

E, estabelecendo-se uma relação do Meio Ambiente com os Direitos Humanos, cabe salientar que não deve o assunto ser enfocado, apenas, quanto às populações indígenas do país, mas a muitas outras, sobretudo a de homens nanicos que começam a surgir na região nordestina, fruto de uma subalimentação há tantos anos denunciada pelos cientistas Josué de Castro, Nelson Chaves e hoje, demonstrada em trabalho sério e valioso de autoria do médico e pesquisador Meraldo Zisman. Portanto, nada mais evidente do que a complexidade e abrangência do problema ambiental no Brasil e, consequentemente, no elo que se queira estabelecer com os Direitos da Pessoa Humana.

II - Caso Específico da Mata Atlântica no Nordeste Brasileiro

Assiste-se, de algum tempo, a destruição das últimas reservas da mata atlântica na região nordeste do país. E isso se dá em decorrência de um fato grave e constante na região, a fome.

As árvores e arbustos que formam a mata são derrubados e transformados ora em lenha para venda destinada aos mais diversos usos, ora em carvão vegetal para consumo da população. Assim, os bosques desaparecem ou viram cinzas comprometendo o meio ambiente, provocando o desaparecimento da fauna, secando fontes e rios, o que, inclusive, traz consequências ao abastecimento d'água de cidades.

O homem que vive numa subumana condição quer sobreviver. O salário que recebe, fruto de sua atividade, é insuficiente para se alimentar e dar comida a sua família. Resta-lhe uma única solução, ou seja, devastar a natureza que é o material mais próximo às suas mãos e nada lhe custará, a não ser um pouco de esforço no manuseio do machado. Pois bem, a fome, provocadora de tantos males, inclusive o nanismo, se sobrepõe a tudo.

III - A Legislação Brasileira

O Meio Ambiente foi, com o advento da Constituição da República de 1988, alçado, pela primeira vez, a matéria constitucional, não só no que pertine ao direito de todos os cidadãos, mas quanto à sua proteção e competência funcional do Ministério Público para agir judicialmente, sempre que necessário, em defesa da proteção ambiental (art. 5°, inciso LXXIII; art. 23, incisos VI e VII; art. 24, incisos VI e VIII; art. 129, inciso III; art. 170, inciso VI; art. 174, § 3°; art. 200, inciso VIII; art. 216, inciso V; art. 225, seus parágrafos e incisos). Além da legislação ordinária federal, sua regulamentação e as consequentes especificidades das leis estaduais. Portanto, não carece o país de um sistema legal adequado a ser aplicado.

Restariam, então, os questionamentos sobre a continuada degradação ambiental.

IV - Considerações Finais

Vejo a questão aqui apresentada como sendo fruto de grave problema social. Não posso pensar que um processo educativo seria o início para uma futura solução, pois quem tem fome não consegue raciocinar.

Assim é que julgo difícil ver impedidas as ações predadoras, pois continuarão as suas práticas enquanto perdurar a miséria no país e o modelo desigual de desenvolvimento econômico que todos os brasileiros estão a assistir.

De que modo se fará aplicar a lei a miseráveis? Qual o resultado de um procedimento judicial contra indivíduos que vivem em tal situação?

Enfim, entendo que, no Brasil, não se pode dissociar questão social e meio ambiente.

Situación del Derecho al Ambiente en Venezuela

ALBERTO BLANCO-URIBE QUINTERO

I. Consagración implícita del derecho al ambiente

La Constitución de la República de Venezuela, vigente desde 1961, no consagra explícitamente, dentro de su catálogo de derechos fundamentales, el derecho al ambiente, llamado también derecho a un ambiente sano y ecológicamente equilibrado.

La única referencia expresa, aunque parcial, al fenómeno ambiental que encontramos en la parte dogmática de nuestra Constitución, consiste en un principio orientador de la política económica, según el cual los recursos naturales deben ser explotados en beneficio de todos. Dice la Constitución en su Artículo 106: "El Estado atenderá a la defensa y conservación de los recursos naturales de su territorio, y la explotación de los mismos estará dirigida primordialmente al beneficio colectivo de los venezolanos". Obviamente, mal podría pretenderse la emergencia, a partir de esta norma, del derecho al ambiente, a pesar de su ubicación en en Capítulo de los derechos económicos.

No obstante, la Constitución venezolana, aunque de modo indirecto, si contempla el novedoso derecho al ambiente, y le ofrece, en consecuencia, todo su régimen protector de los derechos humanos, notablemente el jurisdiccional, toda vez que en su Artículo 50, consagra, como principio básico de nuestro sistema de derechos humanos, la regla del "numerus apertus". En otras palabras, para el ordenamiento jurídico fundamental que rige a Venezuela, la enumeración de los derechos de la persona humana que en él consta de manera expresa, es meramente enunciativa.

Dice el Artículo 50: "La enunciación de los derechos y garantias contenida en esta Constitución no debe entenderse como negación de otros que, siendo inherentes a la persona humana, no figuren expresamente en ella".

No quiso pués el Constituyente negar o desconocer la existencia, ni entorpecer la protección jurídica, de nuevos derechos que pudiesen surgir en razón de la natural evolución de la sociedad y su enfrentamiento a novedosos problemas.

Por supuesto, tales derechos deberán siempre revestir la condición de derechos humanos, vale decir, habrán de ser considerados como inherentes a la persona humana, como esenciales al respeto de la dignidad del hombre, como garantia del ejercicio efectivo del derecho al libre desenvolvimiento de la personalidad humana.

La historia de los derechos humanos, lejos de mostrarnos un logro acabado en una enumeración sistematizada y definitiva, nos enseña que éstos evolucionan en sus definiciones y contenidos, se amplían y complementan constantemente, sin que su unidad se afecte gracias a la interdependencia que los ata, y se enriquecen, más que con la creación, con el descubrimiento de otros, motivado por las nuevas necesidades.

Así, a la trascendental y ya bicentenaria Declaración de los Derechos del Hombre y del Ciudadano, importantísima e influyente compilación de los derechos individuales de carácter civil y político, obra de la Revolución Francesa de 1789, se sumaron los derechos colectivos de naturaleza social, económica y cultural, producto de la Revolución Rusa de 1917.

Este conjunto de derechos fué estructurado en la conocida Declaración Universal de los Derechos Humanos de 1948, y constituye uno de los pilares fundamentales del sistema de las Naciones Unidas, desde la Carta de la Organización de las Naciones Unidas, pasando por diversas declaraciones, convenciones y actos constitutivos de organizaciones internacionales, hasta llegar, entre otros, a los mecanismos de salvaguarda previstos en el Pacto Internacional de los Derechos Civiles y Políticos e su Protocolo Adicional, y en el Pacto Internacional de los Derechos Económicos, Sociales y Culturales, ambos de 1966.

Todo ésto sin olvidar los remarcables sistemas regionales concebidos por la Convención Europea de los Derechos Humanos y la Convención Americana de los Derechos Humanos.

Sin embargo, la historia no termina allí. Además de los derechos individuales y de los derechos colectivos, desde hace cierto tiempo se viene hablando de los derechos de los pueblos, cuyos titulares son, simultáneamente, los Estados, las naciones, las comunidades y los indivíduos.

Estos derechos deben tecnicamente catalogarse como derechos de solidaridad, por ser derechos-deberes, y ya son objeto de innumerables declaraciones y hasta convenciones internacionales. Además, han sido incorporados a casi todos los textos constitucionales que han sido promulgados después de 1972.

Ellos son, posiblemente entre otros, el derecho a la paz, el derecho al desarrollo, el derecho al ambiente y el derecho al patrimonio común de la humanidad.

En esta ocasión, la presente ponencia se consagrará al estudio de la definición e del contenido de uno de ellos: el derecho al ambiente, y a su situación en Venezuela.

No obstante, antes de ello es necesario efectuar un brevísimo análisis introductorio, a fin de mostrar la vía por la cual el derecho al ambiente ingresa al ordenamiento jurídico venezolano.

Así, por la participación positiva de Venezuela en diversos foros internacionales (en particular en la Conferencia de las Naciones Unidas sobre el Medio Ambiente Humano, Estocolmo, Suecia, 1972), así como en la confección y firma de declaraciones y convenciones internacionales aún no ratificadas (como el Protocolo de San Salvador de la Convención Americana de Derechos Humanos) que reconocen este derecho, y en virtud de las técnicas de interpretación jurídica de las fuentes en Derecho Internacional, como lo veremos más adelante, en el orden jurídico fundamental venezolano, se reconoce y tutela, dentro de los derechos humanos, el derecho al ambiente, aunque no esté expresamente contenido en su texto, por ser éste un derecho esencial inherente a la persona humana.

El derecho al ambiente es un derecho humano de solidaridad al que se refieren un sin número de textos internacionales, obligatorios o meramente principistas, consistentes en convenciones regionales de derechos humanos, declaraciones de conferencias y organizaciones internacionales, y preámbulos de tratados en el campo del Derecho Internacional Ambiental.

Asimismo, casi todas las Constituciones de los Estados del mundo, promulgadas o reformadas luego del año de 1972, consagran expresamente en su parte dogmática el derecho del hombre al ambiente. Tal es el caso, por ejemplo, de las Constituciones vigentes del Brasil, de Colombia y de Guyana.

La primera vez que se reconoció la existencia de este derecho, como uno de los derechos inherentes a la persona humana, fué en 1972, con ocasión de la Conferencia de las Naciones Unidas sobre el Medio Ambiente Humano. En esa oportunidad la Asamblea General de la Organización de las Naciones Unidas aprobó la Declaración de Estocolmo, en cuyo Principio 1 se lee: "El hombre tiene el derecho fundamental a la libertad, a la igualdad y al disfrute de condiciones de vida adecuadas en un medio de calidad tal que le permita llevar una vida digna y gozar de bienestar..." (subrayado de la ponencia).

Posteriormente, dentro del marco global de actividades de la Asamblea General de la O.N.U., de los Programas para el Desarrollo (P.N.U.D.) y el Medio Ambiente (P.N.U.M.A.), y de otras instancias internacionales dentro o fuera del sistema de las Naciones Unidas, como el Consejo Económico y Social, la Organización Mundial de la Salud, la Organización Meteorológica Mundial, la Organización Internacional del Trabajo, la Organización de Estados Americanos, el Consejo de Europa, y muchas otras, se han dictado numerosas declaraciones y se

han suscrito, aunque no ratificado por Venezuela, algunas convenciones que reconocen el derecho al ambiente.

Esto nos permite concluir por la vía del consenso principista, y aún cuando este novedoso derecho no esté *expresamente* incorporado a los textos generales o específicos, universales o regionales de derechos humanos (con excepción de la Carta Africana de los Derechos del Hombre y de los Pueblos), tales como la Declaración Universal de los Derechos Humanos, los Pactos Internacionales de Derechos Civiles y Políticos y de Derechos Económicos, Sociales y Culturales, la Declaración y la Convención Americanas de los Derechos Humanos, y la Convención Europea de los Derechos Humanos, que el derecho al ambiente, como los otros derechos de solidaridad, es un derecho esencial a la sobrevivencia del ser humano, inherente a su condición de hombre, el cual se integra, a través de las reglas de interdependencia y complementaridad, a los demás derechos humanos: civiles y políticos y económicos, sociales y culturales, para formar parte de la dogmática universal, conocida como los principios inmodificables del "jus cogens", a que se refiere la Convención de Viena sobre el Derecho de los Tratados.

Igualmente, la interpretación del Estatuto de la Corte Internacional de Justicia en materia de fuentes del Derecho Internacional nos autoriza a concluir en la existencia y reconocimiento del derecho al ambiente en Venezuela.

En efecto, en ausencia de tratado universal o regional sobre la materia, aplicable a Venezuela (toda vez que el Protocolo de San Salvador de la Convención Americana de los Derechos Humanos, que consagra expresamente este derecho, y el Convenio nº 169 de la O.I.T., que lo hace en relación a los pueblos indígenas, no han sido ratificados), y como aún no ha transcurrido un tiempo prudencial que justifique la ocurrencia de normas consuetudinarias, debemos recurrir a los principios de derecho generalmente admitidos por las naciones civilizadas, observándose que el derecho al ambiente está garantizado por la casi totalidad de las Constituciones y/o leyes especiales de los Estados del mundo, como un principio fundamental.

Existe pués un derecho al ambiente, y lo que resta es su definición y contenido generales, antes de observar algunas experiencias normativas y jurisprudenciales en Venezuela.

II. Definición y contenido generales del derecho al ambiente

Con el fin de precisar conceptos que muestren lo que recientemente se ha comenzado a enseñar en Venezuela en relación a la noción del derecho al ambiente, exponemos las siguientes consideraciones:

Los detractores del derecho en estudio han afirmado que no puede hablarse de un verdadero derecho humano, en razón de que el ambiente no es un concepto definible concretamente, sino por medio de referencias abstractas que se sintetizan

en una política a seguir: "el mejoramiento constante de la calidad de la vida", por lo que le niegan también su carácter justiciable.

Pero...¿acaso no adolecen muchos de los derechos humanos, por no decir todos, de ese presunto defecto? ¿Puede definirse en concreto y con validez universal lo que debe entenderse por libertad, salud, seguridad social, privacidad o integridad física? Sin embargo, nadie niega el reconocimiento de estos derechos humanos.

Incluso el derecho a la vida ha dejado de ser la simple garantia de las funciones biológicas que sustentan la existencia, para enriquecerse con la idea de una vida digna y decorosa que asegure el libre desenvolvimiento de la personalidad humana. ¿Acaso esta multiplicidad de ideas implica que no existe el derecho a la vida o que no es justiciable?

!Obviamente no! Los derechos a la vida, a la libertad, a la salud, a la privacidad, al ambiente, etc., son derechos inherentes a la persona humana, plenamente reconocidos y salvaguardados por los ordenamientos jurídicos venezolano e internacional, sólo que se ejercen de modo distinto, aunque complementario, dadas suas finalidades diversas.

El ambiente ha sido definido, siguiendo el administrativista venezolano Henrique Meier,(1) como el conjunto de los elementos de ordem biológico y físico que constituyen la base o el sustento natural del medio humano, sumados a los aspectos socio-culturales y económicos que deben garantizar una interacción hombre-sociedad-naturaleza que asegure la satisfacción de las necesidades sociales más importantes e impida la degradación de los mismos.

Entonces, el derecho al ambiente, formulado generalmente como el derecho a un ambiente sano y ecológicamente equilibrado, seria el derecho individual y colectivo al mantenimiento balanciado, en condiciones de sustentabilidad, de los bienes ambientales (agua, suelo, aire, flora, fauna, paisaje, ecosistemas naturales, habitats humanos), para el disfrute físico y espiritual de cada vez mejores condiciones de vida.

Obviamente, este enunciado idealista de contornos bastante indeterminados, nos llevaria a concebir un contenido múltiple que, con arreglo a la crítica del Consejo Económico y Social de la O.N.U.,(2) nos presentaria más que *un* derecho al ambiente, un *conjunto* de "derechos ecológicos" como por ejemplo: derecho a productos alimenticios ecológicamente limpios, derecho a bienes de consumo sin peligro para el ambiente, derecho a que las actividades productivas no presenten peligro para el ambiente, derecho a un medio de vida natural ecológicamente puro, derecho a la salubridad ambiental, etc., que nos harían salir del campo de los

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(1) MEIER, Henrique, conferencia intitulada "El Derecho Ambiental en el Régimen Social Venezolano", Caracas, 1979.

(2) Conseil Economique et Social, "Droits de l'homme et environnement", rapport établit par Mme. Fatma KSENTINI, document n. E/CN.4/Sub.2/1991/8.

derechos humanos, para situarnos en el dominio de la policía administrativa, con todo lo que ello implica.

Visto de esta forma, no es difícil caer en el error de considerar el derecho al ambiente como no justiciable, por la gran abstracción de estos conceptos, por la imposibilidad de materializarlos en un espacio y momento dado en cabeza de un sujeto de derecho perfectamente individualizable, y por los inconvenientes que presentaría su ejercicio efectivo y su restablecimiento en caso de violación.

Es por ello que debemos concretar el contenido de este derecho. En este sentido, partiendo de la imperiosa necesidad del hombre de asegurar la sobrevivencia y subsiguiente vivencia propia y la de su descendencia, en condiciones de calidad, dignidad, libertad, igualdad y solidaridad, debemos hablar, no ya del derecho al ambiente simple y llanamente, sino del derecho a la conservación ambiental, en el lenguaje del Profesor Alexandre Kiss.(3)

La conservación no es únicamente un objetivo. Es fundamentalmente un mecanismo, o mejor, un conglomerado de técnicas y procedimientos que conducen a la meta de la utilización racional o sostenida de los bienes ambientales en función del desarrollo social.

Por tanto, podemos afirmar que el derecho a la conservación ambiental es un derecho procedural que, como otros, se ejerce por meio de procedimientos legales especialmente creados para asegurar su disfrute efectivo. Estos mecanismos de ley no son exclusivos de este derecho, y se justifican en la necesidad de una verdadera democracia, vale decir, de una democracia directa, dado que el pueblo, como una reacción a la crisis del sistema representativo, clama por información y participación en la toma de decisiones.

En consecuencia, el contenido concreto del derecho al ambiente está integrado por tres tipos de procedimientos, que revisten a su vez la condición privilegiada de derechos humanos. Se trata del derecho a la información, del derecho a la participación en la toma de decisiones susceptibles de afectar el entorno del titular, e del derecho al debido proceso, llamado en España derecho a la tutela judicial efectiva, y entre nosotros los venezolanos, derecho de acceso a la justicia.

El derecho a la información, del cual la libertad de acceso a los documentos administrativos es una especie, está previsto expresamente en el Pacto Internacional de Derechos Civiles y Políticos y en la Convención Americana de Derechos Humanos; y en el campo que nos ocupa, exige que todos los interesados o posibles afectados por una proyectada o instalada actividad industrial, o por la incorporación de un nuevo producto en el mercado, etc., deben ser previa, oportuna y suficientemente informados sobre las eventuales consecuencias que puedan generarse sobre su entorno, así como sobre las características físicas de la actividad,

(3) KISS, Alexandre, "Le droit à la conservation de l'environnement", *Revue Universelle des Droits de l'Homme*, vol 2. n. 12, 31 décembre 1990.

producto, etc., y sobre las medidas a tomar o ya implementadas para eliminar o reducir al mínimo las consecuencias dañosas.

Para ello se crean procedimientos de encuestas públicas; se publicitan las solicitudes de permisos de construcción, industriales, sanitarios o de otra índole, a través del afichaje *in situ*, de los medios de comunicación, y/o se llevan registros, accesibles a todos, en las oficinas administrativas; se dan a conocer los estudios de impacto ambiental; etc.

El derecho a la participación en la toma de decisiones susceptibles de afectar el entorno, reconocido en diversas declaraciones internacionales y Constituciones, implica: 1. en lo relativo a la actividad legislativa, la implementación de referencia, plebiscitos, lobby y mecanismos de iniciativa popular; 2. en lo referente a la actividad administrativa autorizatoria, debe garantizarse la consideración de los alegatos de los terceros-interesados (previamente informados a cabalidad de todos los detalles implicados), tanto en la fase constitutiva del acto administrativo, como en los procedimientos de revisión de su legalidad que hayan sido iniciados por el solicitante del permiso o por ellos. Especialmente se destaca el derecho de contra-experticia en materia de estudio de impacto ambiental. Y 3. en cuanto a la función jurisdiccional, debe permitirse la intervención de los terceros-interesados en todo juicio del que puedan sobrevenir consecuencias para su entorno.

Por último, el derecho al debido proceso, reconocido en el Pacto Internacional de Derechos Civiles y Políticos, en la Convención Americana de los Derechos Humanos y en la Constitución de Venezuela, exige que toda persona afectada por una decisión o actuación directamente perjudicial para el ambiente, o que haya lesionado sus derechos a la información y/o a la participación, pueda acceder a la justicia a fin de obtener, según los casos, la anulación de una ley o de un acto administrativo, la prevención o indemnización de daños, la represión del depredador, la recuperación ambiental, y el restablecimiento de su situación jurídica lesionada.

El recurso de amparo, nacional o internacional, constituye uno de los procedimientos del derecho a la tutela judicial efectiva, entre otros, del derecho al ambiente.

He aqui la definición del derecho en estudio como el derecho a la conservación ambiental, y su contenido procedural que asegura su disfrute.

Pasemos ahora revista a algunas experiencias normativas y jurisprudenciales venezolanas, relativas al ejercicio del derecho al ambiente.

III. La experiencia venezolana sobre el derecho del hombre al ambiente

Como ya dijimos, el derecho al ambiente no está expresamente previsto en una convención internacional aplicable a Venezuela, ni en la Constitución.

Tampoco lo está en la Ley Orgánica del Ambiente, ni en otra ley o texto de inferior jerarquía.

Sin embargo, por los motivos expresados anteriormente, este derecho humano existe en Venezuela, como lo ha admitido inequivocamente la jurisprudencia, tanto de los tribunales de instancia, como de la Corte Suprema de Justicia. Además, el Legislador, y también el Reglamentador, como respuesta a las exigencias de un movimiento asociativo urbano-ambientalista cada vez más crítico, serio, emprendedor y dinámico, se han comprometido en la senda de la descentralización y la democracia directa, creando cada vez mayores posibilidades de información, participación y acceso a la justicia, a través de procedimientos jurídicos que facilitan la salvaguarda de los intereses colectivos y difusos.

En este orden de ideas, mostraremos primero una parte de esa rica evolución normativa, para luego ocuparnos de la protección jurisdiccional del derecho al ambiente.

La ley-marco o ley general que regula en Venezuela todo lo relativo al ambiente, estableciendo los principios básicos del Derecho Ambiental, es la Ley Orgánica del Ambiente del 16 de junio de 1976. El objeto de esta Ley es el de determinar, y declarar de utilidad pública, los principios rectores de la conservación, defensa y mejoramiento del ambiente.

El Artículo 3, destinado a precisar lo que ha de entenderse por conservación, defensa y mejoramiento del ambiente, consagra la promoción de iniciativas públicas y privadas que estimulan la participación ciudadana en los problemas relacionados con el ambiente. Queda así consagrado el derecho a la participación, garantizado por procedimientos legales, de los que mostraremos algunos más adelante.

El derecho a la información también está presente en esta norma, primero porque el derecho a la información es el corolario del derecho a la participación: mal puede participarse eficaz y oportunamente en un procedimiento si se carece de un mínimo de información. Y segundo, en razón de que este Artículo se refiere, igualmente, a la orientación de los procesos educativos y culturales que fomenten una conciencia ambiental, a la educación de las actividades de los particulares en cuanto tengan relación con el ambiente, y a la promoción y divulgación de estudios e investigaciones concernientes al ambiente.

Por otro lado, la Ley Orgánica de Procedimientos Administrativos del 1 de julio de 1981, aplicable notablemente a los procedimientos autorizatorios, obliga a la Administración Pública a notificar a los particulares cuyos derechos o intereses legítimos pudieren resultar afectados, de la apertura de todo procedimiento, concediéndoles oportunidad para participar en la protección de sus esferas jurídicas subjetivas. Es de destacar, obviamente, que tales particulares también pueden provocar el início del procedimiento para la revisión de la legalidad de un permiso ya concedido, y que en todo caso, las decisiones administrativas que puedan

afectarlos, deben siempre serles comunicadas, a fin de garantizarles el derecho a la defensa y el derecho al debido proceso.

En el mismo orden de ideas, la Ley Orgánica de Régimen Municipal del 15 de junio de 1989, dispone que "los Municipios y Distritos deben suministrar la más amplia información sobre su actividad y promover la participación de todos los ciudadanos en la vida local", y que los vecinos de un Municipio tienen el "derecho a participar en la gestión municipal". Además, dentro de la competencia del Municipio encontramos la "protección del ambiente y la cooperación con el saneamiento ambiental".

Ahora bien, dentro de los mecanismos específicos que consagra esta Ley, encontramos lo siguiente: "todos los ciudadanos tienen derecho a consultar los archivos y registros y a obtener copias"; "los Municipios deben favorecer el desarrollo de las Asociaciones de Vecinos destinadas a la defensa de los intereses colectivos; se realizarán cabildos abiertos periódicos donde el público podrá formular preguntas, opiniones y propuestas; las Asociaciones de Vecinos u otras igualmente representativas gozan de iniciativa legislativa; los vecinos pueden lograr que los proyectos de ordenanzas u otros asuntos de interés colectivo se sometan a consulta por la vía del referéndum; instalación de comisiones de vecinos para vigilar el funcionamiento de los servicios públicos, etc.

Finalmente, en materia especificamente ambiental, cabe destacar el Decreto n. 1221 del Presidente de la República, de fecha 2 de noviembre de 1990, contentivo del Reglamento de Guardería Ambiental, en el que se aseguran los derechos a la información y a la participación.

Así, por guardería ambiental se entiende la actividad tendiente a la prevención, vigilancia, examen, control y sanción de las acciones u omisiones que directa o indirectamente sean susceptibles de degradar el ambiente. Dentro de los órganos auxiliares del servicio de guardería ambiental, el Decreto menciona a las Asociaciones de Vecinos, las Juntas para la Conservación, Defensa y Mejoramiento del Ambiente, los Comités Locales Conservacionistas, las Ligas contra Incendios, y los demás órganos y asociaciones de participación ciudadana.

A tales órganos auxiliares se les asignan las siguientes atribuciones: denunciar ante las autoridades administrativas y judiciales los hechos dañosos al ambiente, participar en los procedimientos administrativos de su interés, planificar y ejecutar actividades de gestión ambiental, colaborar con la administración y la policia en la protección ambiental, etc.

Sin embargo, no se ha implementado un registro que centralice y ponga a disposición de estos órganos auxiliares, toda la información relativa a los permisos y autorizaciones que se hayan emitido, o estén en trámites, por lo que en la práctica se dificulta en extremo, por no decir que se imposibilita completamente, la labor de control preventivo de las actividades capaces de alterar perjudicialmente al ambiente.

En la realidad, tal y como si este reglamento no existiese, estos entes quedan limitados a la reacción puntual frente a un fenómeno de contaminación que afecte la salud pública u otro interés colectivo. Existe el derecho, pero fallan las garantías para su ejercicio.

La última experiencia normativa que nos permitiremos citar, es el Decreto n. 1741 del Presidente de la República, de fecha 25 de julio de 1991, contentivo del Reglamento sobre Estudios de Impacto Ambiental.

De acuerdo con este Reglamento, una vez recibido el Estudio de Impacto Ambiental, se realizará, dentro de los treinta dias siguientes, un proceso de revisión y consulta con las organizaciones no-gubernamentales que tengan interés en el proyecto evaluado. Para ello, se les notificará, por la prensa nacional o local, el sitio y horario de consulta, a fin de que realicen suas observaciones en audiencia pública, y las consignen por escrito.

El proceso de consulta será coordinado por la Oficina de Relaciones con la Comunidad Organizada del Ministerio del Ambiente y de los Recursos Naturales Renovables.

Luego de analizados los argumentos esgrimidos en la audiencia pública, se emitirá la Declaración de Impacto Ambiental, acto administrativo suficientemente motivado en el sentido de autorizar o rechazar la actividad solicitada por el interesado. Este documento es de consulta pública y a tal efecto sólo se omitirán las informaciones que puedan afectar la propiedad industrial y otros derechos protegidos por la ley.

Como podemos observar, este reglamento responde perfectamente a la idea de la vigencia de un derecho al ambiente, fundamentado en el ejercicio de los derechos procedurales a la información y a la participación. No obstante, dadas la "juventud" de este decreto, y la ausencia de las resoluciones ministeriales que deben complementar su ejecución, no podemos pronunciarnos en cuanto a la eficacia en su aplicación.

Es, sí, sin lugar a dudas, un buen ejemplo de lo que queremos mostrar aquí como experiencia normativa, en cuanto a la creación de procedimientos legales para el ejercicio del derecho a la conservación ambiental.

Hablemos ahora, para terminar, del derecho de acceso a la justicia en el campo del derecho al ambiente.

Ante todo es menester señalar que la jurisprudencia, en general, se ha mostrado opuesta a admitir la acción en justicia, cuando esta persigue la tutela jurisdiccional de intereses difusos o colectivos, habiendo sido instaurada por individuos u organizaciones no-gubernamentales no autorizadas legalmente para actuar en defensa del interés general.

De modo que son muy pocos los casos en los que se ha logrado poner en juego la responsabilidad civil del depredador ambiental, en virtud del conocido adagio según el cual, en ausencia de interés, no hay acción. Por ésto, muchas veces

se ha preferido recurrir al Ministerio Público, para que sea éste quien accione en justicia.

Por lo que respecta a la responsabilidad penal, cabe destacar que la novedosa Ley Penal del Ambiente del 3 de enero de 1992 no permite la constitución, como parte civil, de las organizaciones no-gubernamentales. Sin embargo, la acción penal ambiental es pública, y ello significa una arma persuasiva importante en manos de tales organizaciones, cuando actúan como auxiliares de guardería ambiental.

En cuanto al control de la constitucionalidad de las leyes rige la acción popular, ya que para nuestro ordenamiento jurídico basta un interés simple en el accionante. Esto es fundamental, toda vez que, como ya dijimos, el derecho al ambiente está implícitamente consagrado en la Constitución.

En lo relativo al control de la legalidad de los actos administrativos, es el caso que nuestro derecho exige, en principio, que el accionante haya sido afectado en sus derechos o en sus intereses personales, legítimos y directos. Este requerimiento, al comienzo, motivó que la jurisprudencia rechazara un sin número de recursos, sobre la base de que la protección del ambiente representa un interés difuso o colectivo cuya defensa sólo puede ser ejercida por entes legalmente autorizados.

Sin embargo, debido a la diversidad de mecanismos de participación que se han creado, y de los cuales ya analizamos algunos, se ha facilitado la prueba del interés de las organizaciones no-gubernamentales, y con ello se ha garantizado, poco a poco, su acceso a la justicia. Además, en el caso concreto de las Asociaciones de Vecinos, éstas han sido expresamente autorizadas para ejercer los recursos administrativos, judiciales y de cualquier otra índole, que fueren menester para el cabal cumplimiento de las normas legales o reglamentarias que se vinculen a la preservación de la legalidad urbanística y, en general, a la protección de los derechos de los vecinos (Decreto n. 1297 del 22 de noviembre de 1990 sobre la participación de la comunidad).

Ahora bien, lo que nos interesa destacar primordialmente es la consagración, por el ordenamiento jurídico venezolano, de un mecanismo específico de protección jurisdiccional de los derechos humanos, conocido como recurso de amparo. Esta vía recursoria es esencial, entre otras cosas, porque a diferencia de lo que ocurre en otros países que la han instaurado, em Venezuela todos los tribunales y cortes son tribunales de amparo, es decir, tribunales constitucionales, correspondiéndoles la tutela jurisdiccional de los derechos humanos más vinculados a sus competencias ordinarias.

Así, el Artículo 4° de la Constitución establece que los tribunales ampararán a todo habitante de la República en el goce y ejercicio de los derechos y garantias que la Constitución consagra. Se recuerda que el derecho al ambiente es uno de esos derechos.

Esta disposición constitucional ha sido desarrollada por la Ley Orgánica de Amparo sobre Derechos y Garantias Constitucionales del 22 de enero de 1988, en cuyo Artículo 1 se dispone que toda persona natural habitante de la República, o persona jurídica domiciliada en ésta, podrá solicitar ante los tribunales competentes el amparo para el goce y el ejercicio de los derechos y garantias constitucionales, "aún de aquellos derechos fundamentales de la persona humana que no figuren expresamente en la Constitución, con el propósito de que se restablezca inmediatamente la situación jurídica infringida o la situación que más se asemeje a ella".

Es evidente que el derecho al ambiente, como derecho fundamental, se haya protegido, teóricamente, por el recurso expedito y sumario de amparo, cualquiera que sea la naturaleza jurídica del ente o sujeto agraviante.

No obstante, la jurisprudencia de amparo ha sido extremamente cautelosa a la hora de admitir los recursos interpuestos, exigiendo al recurrente la justificación de un derecho violado directamente a él, lo que ha dificultado la tutela de derechos difusos o colectivos como el que nos ocupa, salvo que el recurrente sea una Asociación de Vecinos o el Ministerio Público.

Además, las ya comentadas imprecisiones en la noción de derecho al ambiente, han conducido a muchos jueces y magistrados a la errada conclusión de que éste no existe como tal, o que existiendo, al ser difuso, sólo puede ser amparado a iniciativa de una Asociación de Vecinos o del Ministerio Público.

En virtud de lo anterior, las víctimas de violaciones al derecho al ambiente han preferido denunciar el irrespeto de otros derechos, sobre los cuales nadie discute su carácter de derechos humanos fundamentales justiciables, como lo son el derecho a la salud (del cual el derecho a la salubridad ambiental es una especie), y los derechos a la información, a la participación, a la protección de la vida privada y familiar, a la salvaguarda del hogar doméstico, al estudio, a la integridad física, al libre desenvolvimiento de la personalidad humana, a la vida, etc.

Lo que interesa es la protección jurisdiccional del derecho al ambiente, y si conceptualmente ello ha resultado dificil dado el desconocimiento que de él tienen nuestros jueces y magistrados, las víctimas lo han estado logrando, lenta pero eficazmente, por medio de la tutela de otros derechos humanos, aprovechando la interdependencia de todos éstos, y transformando los tribunales en escuelas y centros de sensibilización.

Ilustremos estas aseveraciones con la Sentencia de fecha 30 de mayo de 1989, dictada por el Juzgado Agrario del Estado Mérida, en la cual se amparó el derecho al ambiente, a través de la tutela del derecho a la salud de diversas familias y comunidades del sector, víctimas de la contaminación de la zona protectora de la sub-cuenca del Rio Mucujún.

En esa ocasión, el tribunal ordenó, entre otras medidas, la suspensión provisional de las actividades ganaderas de los sujetos implicados, mientras se

adecúan a la normativa legal: la construcción de sistemas de tratamientos para aguas servidas y excretas animales; y, se prohibe el establecimiento de nuevos desarrollos ganaderos, y la ampliación de los existentes, mientras no se determine la capacidad total de la zona; todo bajo el control del Ministerio del Ambiente y la supervisión del tribunal.

IV. Conclusión

El derecho al ambiente, definido como el derecho del hombre a la conservación ambiental, y cuyo contenido consiste en la implementación de procedimientos legales que garanticen el exercicio efectivo de los derechos a la información, a la participación y al debido proceso, es un novedoso derecho humano de solidaridad, reconocido en el plano internacional como principio del "jus cogens" y/o como principio de derecho generalmente admitido por las naciones civilizadas, por lo que a tenor del Artículo 50 de la Constitución Nacional, es un derecho fundamental del orden jurídico venezolano.

Como tal derecho humano, el derecho al ambiente se beneficia de los mecanismos nacionales de protección jurisdiccional, lo cual se ha logrado, en ausencia de reconocimiento expreso, y a pesar del desconocimiento general que hay en relación a este derecho por su ausencia de los pensa de estudios, gracias a la interpretación extensiva de derechos tales como la salud, la vida, la privacidad, la protección familiar, la cultura, la inviolabilidad del hogar, la información y el debido proceso.

Finalmente, hacemos um llamado sobre la imperiosa necesidad en que nos encontramos en el sentido de que se implementen, a todo nivel, estudios y demás programas de formación y divulgación sobre este nuevo derecho humano.

[Costa Rica:] La Legislación como un Instrumento para el Desarrollo Sostenible

PATRICIA MADRIGAL C.

I. El Concepto del Desarrollo Sostenible

En la década de los 80 se propuso como solución al problema de la degradación ambiental y al agotamiento de los recursos naturales, el concepto del Desarrollo Sostenible.

Debido a que el problema ambiental dejó de ser una preocupación exclusivamente científica, sino también compartida por políticos, economistas, público en general, quedó en evidencia que las posibilidades de desarrollo estaban fuertemente condicionadas por el manejo que se realizara de los recursos naturales.

Todas las demandas por un mayor bienestar están fundamentadas en la oferta ambiental, que es obviamente limitada. La satisfacción de esas demandas debe ser pues lo más racional posible.

En el concepto de desarrollo sostenible se pueden distinguir dos componentes, que para efectos de análisis pueden considerarse desde su perspectiva temporal. El objetivo actual, es el mejoramiento de la calidad de vida de todos los habitantes. El objetivo futuro, no menos importante, consiste en no comprometer el futuro de las futuras generaciones restringiendo sus alternativas de desarrollo.

No obstante, esta disgregación temporal puede considerarse únicamente desde un punto de vista académico. Puesto que, el mejoramiento de la calidad de vida de los habitantes de hoy, conlleva necesariamente a tomar las decisiones apropiadas para no comprometer el desarrollo de las futuras generaciones, restringiendo sus opciones debido a la degradación de los recursos o a la contaminación.

Los elementos que han sido señalados como indispensables para un desarrollo sostenible pueden clasificarse para estos mismos efectos en:

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Culturales, cuyo objetivo es el rescate de tradiciones autóctonas, que promuevan una forma de vida más frugal y sobria, sin disminuir el nivel de bienestar que ha producido el desarrollo de la humanidad.

Fundamentados en que una sociedad que se base en formas ilimitadas de consumo, genera una demanda insostenible hacia la oferta compuesta por la base de los recursos naturales. Raiz de graves problemas de contaminación, como lo son los desechos sólidos y líquidos. Además de sus repercuciones éticas de surgimiento de nuevos valores en menosprecio de otros como pueden ser el ahorro.

Éticos, escala de valores sustentados en el respeto a toda forma de vida, incluyendo las futuras generaciones.

Fundamentación filosófica que no ha sido lo suficientemente profundizada, como para brindar una base sólida para análisis posteriores en otras disciplinas.

A este respecto, el concepto jurídico de "interés público" o de "bien comun" podría verse enriquecido con argumentos claros y consecuentes, que desarrollen la idea de que la conservación, más que un requisito para el desarrollo, es la base de la supervivencia. Razón por la cual deben tomarse algunas medidas que de otra forma podría considerarse como inaceptables, debido a que afectan intereses individuales o grupales claramente definidos.

Sociales, procurando una mayor articulación de la sociedad para el logro de metas comunes.

La problemática ambiental revela una naturaleza compleja e interdependiente, similar a los ecosistemas, donde todos sus elementos son causas o consecuencias entre sí, íntimamente entrelazados.

Para enfrentar esta realidad, los esfuerzos individuales no trascienden sustancialmente esa iniciativa. Solamente superando la individualidad, la falta de solidariedad, y logrando la verdadera coordinación, que se traduce en procesos de articulación de grupos sociales en búsqueda de soluciones a sus problemas, es que se puede pensar en estrategias exitosas.

Económicos, promoviendo una mejor distribución de los ingresos.

El documento "*Nuestra Propia Agenda*", recientemente elaborado como una base de discusión lationamericana, centra claramente como un requisito ineludible en la búsqueda de soluciones al problema ambiental, la disminución de la pobreza.

La pobreza se reconoce como causa y consecuencia fundamental del problema ambiental, originando un círculo vicioso difícil de romper.

Por un lado, la falta de terrenos propicios para actividades productivas genera gran presión sobre las áreas protegidas, asi como, el subdesarrollo implica condiciones insalubres, focos de contaminación y depredación de los pocos recursos disponibles.

Este es uno de los mayores retos, de más difícil solución, que constituye a su vez un requisito para que se den los otros elementos en forma plena.

Políticos, fomentando una mayor participación pública en la toma de decisiones.

Así como la pobreza se considera como el obstáculo principal a enfrentar para resolver el problema ambiental, los sistemas democráticos representativos se señalan como la única forma de organización política dentro de la cual se puede dar un desarrollo sostenible. Una mayor gestión democrática, se señala como el proceso para la toma de decisiones en manejo de recursos naturales.

Resulta claro que el concepto de desarrollo sostenible implica una transformación de la sociedad que conocemos en este momento, en todos los niveles desde los sistemas productivos, hasta las formas de organización sociales, políticas y económicas, pasando por un cambio de actitudes y valores. Por eso consideramos que en el fondo, se trata de un discurso ideológico. Sin querer con esto dificultar más su análisis, es hora de que se establezca claramente, para pasar ya de los esquemas conceptuales a las estrategias de acción.

El aspecto político, que existe como un requisito indispensable, la mayor participación pública en la toma de decisiones, es un elemento en el que talvez exista consenso. Por lo menos, es reiteradamente expresado en todo tipo de documentos. Pero en las acciones concretas para lograrlo podría no existir ese mismo acuerdo.

Los instrumentos para lograr ese objetivo pueden ir desde la revisión de los procesos electorales, con el fin de examinar la representatividad de los cargos públicos, hasta la existencia de mecanismos permanentes de consulta y de consenso sobre políticas de desarrollo, especialmente sobre las que incentivan actividades productivas con niveles importantes de impactos negativos al ambiente.

En cuanto al elemento social, de una mayor articulación para el logro de metas comunes, implicaría no sólo la permisión de las asociaciones en su sentido amplio, sino también su fomento y protección. Obviamente, la existencia de grupos sociales organizados es un requisito importante para el logro de sistemas políticos más representativos.

La mejor distribución de los ingresos, es un elemento de tipo económico, pero que coadyuva en el logro de los aspectos sociales. Implica no sólo las consideraciones sobre procesos productivos y tenencia de tierra, sino también, en cuanto a las políticas fiscales y tributarias.

II. Aporte de las Ciencias Juridicas al Concepto del Desarrollo Sostenible

Todos los elementos anteriormente señalados, como indispensables para un desarrollo sostenible, se pueden definir más bien como principios rectores que deberían orientar las políticas nacionales e internacionales.

Si bien es cierto que ofrecen una orientación adecuada, en un sentido humanista positivo, no egocéntrico sino holístico. En tanto no existan ideas

concretas sobre su ejecución, no podemos traspasar el umbral de las buenas intenciones. En este sentido, todas las disciplinas deberían buscar la forma de aportar los instrumentos necesarios para que sean realidad.

El aporte de las ciencias jurídicas, hasta ahora, para brindar instrumentos adecuados para hacer viable el desarrollo sostenible, es sumamente pobre.

Debido a que el Derecho es la forma que utiliza la sociedad para regular sus actividades, abarca todas estas expresiones, debiendo entonces ofrecer un análisis detenido, que determine contradicciones entre los institutos tradicionales que han regulado los recursos naturales y el ambiente, o la necesidad de crear nuevos instrumentos idóneos para esta problemática.

Solamente a manera de ejemplo, algunos temas que pueden señalarse como motivo de estudio por parte de las ciencias jurídicas son los seguientes:

1. En el Derecho Constitucional, se encuentra aceptado como un derecho individual, la propiedad privada. El Derecho Agrario ha reinterpretado el concepto tradicional que admitia el uso, disfrute, transformación y hasta destrucción de la propiedad, para incorporar el concepto de la función social. No obstante, todavia se requiere del aporte del Derecho Ambiental para determinar el concepto de propiedad de las áreas protegidas, de los recursos naturales tales como flora, fauna, bancos genéticos, suelo, recursos marinos, etc.

2. En el Derecho Administrativo, se ha avanzado considerablemente en la definición del interés público como criterio de interpretación de los actos administrativos. Pero podría pensarse en la existencia de un interés ambiental por encima del interés público y del administrativo? O es el interés ambiental un interés público?

3. En cuanto a la penalización de la agresiones contra el ambiente, todavia queda mucho camino por recorrer. Existen serias dificultades conceptuales en el Derecho Penal, para poder convertir esas acciones en delitos ambientales.

III. Reto Institucional para Lograr un Desarrollo Sostenible

Además de resaltar el largo camino que queda por recorrer en cuanto a la discusión y análisis de temas jurídicos de fondo, debe señalarse que la organización administrativa actual no responde a las necesidades de una solución integral del problema ambiental.

La organización administrativa de la región sigue considerando en forma sectorial los recursos naturales, designando varios órganos administrativos a los diferentes usos del recurso, sin que exista coordinación entre ellos y menos aún sin que se considere la conservación del recurso como la base de su utilización racional.

Esta multiplicidad de instituciones produce obviamente una duplicidad de esfuerzos, confusiones en cuanto a la competencia, y una insuficiente cuota de responsabilidad.

En la "Estrategia para la Conservación y el Desarrollo Sostenible en Costa Rica" (ECODES) existe un planteamiento sobre reorganización administrativa interesante de rescatar como respuesta al reto institucional que los problemas ambientales demandan.

Vale la pena traerlo a colación en este momento, puesto que es una iniciativa que tiene grandes ventajas:

En primer lugar, trata de resolver el problema del manejo de los recursos naturales en forma integral. Para ello agrupa las instituciones que tienen que ver con usos finales y las incorpora en las labores de planificación global del recurso en sí.

En segundo lugar, establece mecanismos importantes de apoyo para la toma y el seguimiento de las decisiones, de aplicación y control.

En tercer lugar, plantea una forma sistemática de coordinación entre el Ministerio encargado de la Planificación (MIDEPLAN) y el Ministerio encargado de los Recursos Naturales (MIRENEM), tratando de aprovechar la experiencia y recursos existentes.

No se trata de creación de nuevas instituciones, sino de una reorganización administrativa que pretende aprovechar en forma integral los esfuerzos institucionales para la conservación de los recursos.

Se establecen dos consejos interdependientes:

1. El Consejo de Ordenamiento Territorial, que seria el que tiene que ver directamente con el uso del territorio. La regulación de la ubicación espacial de las actividades humanas.

Estaria compuesto por los siguientes sectores, donde la rectoría le correspondería al MIDEPLAN:

* Asentamientos Humanos
* Agropecuario
* Forestal, Areas y Vida Silvestre
* Asuntos Pesqueros y del Litoral
* Minería, y
* Transporte.

2. El Consejo de Calidad Ambiental, que sería el que tiene que ver con las acciones de mitigación y control de la degradación ambiental.

Estaría compuesto por los siguientes sectores, donde la rectoría le correspondería al MIRENEM:

* Recursos Hídricos
* Energía

* Turismo
* Industria y Comercio
* Ciencia y Tecnología
* Salud y Contaminación Ambiental

Los miembros de estos Consejos deberían ser dos funcionarios por sector, preferiblemente uno de alto rango político y otro de gran conocimiento técnico del recurso y de la institución. Para poder garantizar la decisión política por un lado, pero también, la permanencia y conveniencia de esas decisiones.

Cada uno de estos sectores estaría formado a su vez, con las instituciones que tienen que ver con la prestación del servicio, los usos finales o la definición de las políticas asociadas con el recurso.

Lo interesante del planteamiento es que integra los dos Ministerios más relacionados, y a la vez les brinda apoyo técnico y de orientación a través de tres unidades:

* Legislación y Admininstración

Esta unidad se encargaria de evitar conflictos legales y administrativos entre las iniciativas jurídicas recientes o de promoverlas en caso de ausencia. Siempre evaluando el impacto que tiene la promulgación de nueva legislación sobre el ordenamiento jurídico vigente, cosa que hasta el momento desgraciadamente no se ha realizado.

* Información y Tecnología

Esta unidad se encargaria de llevar apropiadamente los bancos de datos especializados, en coordinación estrecha con los centros académicos y de investigación, nacional e internacionalmente.

* Comunicación, Educación y Cultura

Su objetivo sería de la fomentar un cambio de actitud frente a la Naturaleza, para poder establecer una relación más armoniosa, con el fin de garantizar procesos sustentables a largo plazo para las futuras generaciones. Este sector usualmente no ha sido suficientemente tomado en cuenta y es señalado como uno de los más importantes para corregir los problemas a largo plazo.

Esta iniciativa vale la pena retomarla, discurtirla y analizarla, porque parece ser una propuesta muy razonable para traspasar el umbral de los diagnosticos y de llegar al campo de las acciones.

IV. Educación Legal Ambiental: Una Experiencia Concreta

Los presupuestos para que una norma pueda cumplir con el fin para el que fue creada, son su eficiencia o sea, su idoneidad para lo que se pretende y su eficacia o sea, su grado de aplicación.

Existen normas que son idóneas pero no se aplican. Y a la inversa, existen normas que se aplican pero que no son idóneas.

Sin embargo, antes de llegar a estos dos estadios, existe un presupuesto lógico sobre el cual se asienta todo ordenamiento jurídico, la presunción de que las leyes son conocidas. Principio que se conoce como "nadie puede alegar ignorancia o desconocimiento de la ley".

A veces, vale la pena cuestionar esas presunciones. Y en estos momentos, la cantidad de regulaciones que se promulgan diariamente es tan grande, que ni siquiera un abogado puede mantenerse al tanto de toda la normativa vigente.

La presunción del conocimiento de la ley, no puede por esta constatación de la realidad, desecharse. Pues, crearía mayor confusión en cuanto a la aplicación de la ley. Sin embargo, ser concientes de esta realidad puede llevar a tomar acciones concretas que mejoren su aplicación, su eficacia.

La legislación ambiental en la región centroamericana, se encuentra todavia en un grado incipiente de desarrollo. Por lo que, las normas ambientales están dispersas en todo el ordenamiento jurídico. Los esfuerzos de clasificación y recolección se han ido dando en algunos países mejor que en otros.

El primer paso, para que realmente la legislación pueda constituirse en un instrumento para el desarrollo sostenible es el conocimiento de lo que está vigente.

Para conocer lo que está vigente se debe recopilar, clasificar y analizar la legislación ambiental.

Realizada esta labor debe transmitirse a todos los sectores involucrados de la sociedad, al fin y al cabo todos. Pero especialmente: a quienes deben aplicarla y a quienes afecta su no aplicación.

Es por eso, que quiero terminar este breve ensayo con la relación de una experiencia concreta en educación legal ambiental, con sus logros y sus retos.

La Asociación para la Defensa de los Recursos Naturales (CODECE) está formada por vecinos del cantón de Escazú, en San José, Costa Rica. El motivo de su fundación, fue como usualmente sucede con las ONGs en nuestra región, una situación coyuntural que les perjudicó directamente, a través de la cual se fueron involucrando en los temas de conservación.

Su acción se centra alrededor de una Zona Protectora, categoría de manejo creada para proteger las fuentas de agua, con una extensión de 7000 hectáreas aproximadamente. Dentro de sus acciones de vigilancia, en una oportunidad pusieron una denuncia por tala ilegal de árboles, con la intención de crear un precedente para desestimular este tipo de acciones en la zona. No obstante, la denuncia no prosperó ni se llegó a ningún tipo de condenatoria. En otra oportunidad, pasó exactamente lo mismo. Produciendo un desencanto, una maliciosa sospecha de las autoridades judiciales y una frustración de sus objetivos.

A raíz de esta experiencia, decidieron buscar asesoramiento legal ambiental para mejorar la conservación de esta Zona Protectora. Alrededor del área se ubican 6 cantones, y la presión urbana sobre estos Cerros comienza a ser cada dia mayor.

Al iniciar las labores de la Oficina de Asesoría Jurídico-Ambiental, varios hechos quedaron de manifiesto. Los grupos locales buscan en la Administración Pública o en las Autoridades Judiciales acciones y respuestas positivas de conservación. Intuitivamente la población denuncia lo que le parece malo, sin saber si eso realmente está prohibido o regulado en alguna ley, menos aún conocen a ciencia cierta cuál es la institución u órgano encargado. Por parte de la organización comunal existe solamente una preocupación por sus problemas inmediatos, los grupos que están un poco más desarrollados descubren que la raíz de esos problemas es de tipo ambiental, pero ninguno conoce los derechos y deberes juridicamente establecidos al nivel ambiental.

Sorprendentemente, en la Administración Pública y en las Autoridades Judiciales la situación es muy similar.

En la Administración Pública el porcentaje del presupuesto que se dedica a capacitación es mínimo. Los funcionarios públicos son nombrados en sus puestos, para aplicar la legislación. Pero su conocimiento de las funciones que les corresponden y de las atribuciones legales para hacerlo es muy limitado. Actúan con temor a represalias o a incurrir en yerros que los pueden llevar a procesos judiciales.

En las Autoridades Judiciales, existe una subvaloración de las acciones que atentan contra el ambiente, las que no se consideran delictivas. Por otra parte, su formación profesional dentro de las Escuelas de Derecho no incluyen materias específicas sobre Legislación Ambiental, tampoco como contenidos de otras materias como Derecho Administrativo o Penal. Por esta razón, existe gran desconocimiento sobre la legislación ambiental, lo cual se ve empeorado por la poca investigación que se realiza en este campo.

Frente a este panorama, las acciones que emprendió la Asociación pudieron detectar este tipo de razones pero no mejoraron los resultados, los que siguieron siendo desalentadores.

Se iniciaron entonces cursos de capacitación en legislación ambiental para funcionarios públicos. El primero que se realizó, fue dirigido a los miembros de los Gobiernos Locales. El objetivo fue que analizaran los problemas que enfrentan en sus cantones y que descubrieran en ellos una raíz ambiental.

En el campo temático, el énfasis se centró en la necesidad de incluir la variable ambiental dentro de sus procesos de planificación y que dedicaran más atención a este tipo de problemas, que podían reforzar su prestigio como administradores del cantón.

El segundo, se dirigió a autoridades judiciales. Los alcaldes o jueces que reciben las denuncias en esta zona y a quienes llega el conocimiento de la causa. En

este curso se enfatizó en las normas penales ambientales de cada uno de los sectores: bosques, aguas, vida silvestre, urbanismo y salud.

El tercero, incluyó todos los funcionarios que tienen relación con la vigilancia y control de la legislación ambiental: inspectores municipales, de salud, forestales, de vida silvestre y la guardia de asistencia rural. El tema principal fue destacar las funciones que les han sido encomendadas en las leyes ambientales y las atribuciones para poder cumplir con ellas.

En todos estos cursos se utilizan metodologías participativas, donde primero se conoce el recurso, a través de conversaciones con expertos en el tema, como por ejemplo: cuencas hidrográficas, contaminación o vida silvestre. Y posteriormente, a través de trabajo en grupos se conoce y discute la regulación jurídica que existe sobre ese recurso.

Esta interacción entre los técnicos o científicos conocedores del recurso, los abogados como reguladores, los funcionarios públicos como encargados de la aplicación de la ley y la comunidad como usuarios o afectados directos de su conservación, ofrece perspectivas sumamente interesantes. En una dinámica de la que sólo se esperan resultados positivos.

El desconocimiento administrativo y legal crea confusión y es un obstáculo para la consolidación y permanencia de las organizaciones locales o comunales, que pronto se desarticulan ante este problema y se frustran sus esperanzas. La pregunta que intentamos contestar, y ojalá en una oportunidad próxima podamos compartir, es ¿qué pasa cuándo existe una organización comunal con los conocimientos administrativos y legales necesarios para cumplir con su labor?

Algunos Aspectos de la Realidad Medio Ambiental en Chile

ANA MARÍA CERDA

En Chile, a partir de los años 60 se configuraron los primeros grupos de investigadores en materias ecológicas que han aportado antecedentes básicos en esta temática. Interesa resaltar que muchos de estos investigadores se comenzaron a motivar por las problemáticas ambientales, realizando importantes aportes acerca de estos temas. Sin embargo, la mayoría del país no estaba sensibilizada ni tenía conocimientos acerca de la problemática del medio ambiente.

Paulatinamente se le empieza a dar más relevancia a esta problemática, especialmente, despúes de la Conferencia de Naciones Unidas sobre el Medio Ambiente Humano (Estocolmo 1972). Esta mayor conciencia, preocupación y conocimientos se tradujo, por parte del Gobierno, en la elaboración de políticas públicas. Es así como, en la actual Constitución Política de Chile de 1980, se establece "El derecho de los ciudadanos a vivir en un ambiente libre de contaminación" agregando que es deber del Estado que "este derecho no sea afectado y que debe tutelar por la preservación de la naturaleza". Otro inciso se refiere a la posibilidad de limitar por medio de la ley el ejercicio de ciertos derechos y libertades para proteger el medio ambiente.

Sin embargo, a pesar de esta legislación, durante el Gobierno de Pinochet, no se evidenció ningún intento serio por controlar el deterioro progresivo ni la depredación de los recursos naturales. Se pudo constatar una escasez de medios de control desde el Estado para hacer cumplir la disposiciones jurídicas; dispersión en la legislación llegando a existir leyes contradictorias entre sí y falta de recursos para que los diferentes organismos, estatales o de la sociedad civil, pudieran hacer efectivas las disposiciones existentes.

Por otra parte, producto de un modelo de desarrollo económico basado en un modelo de economía social de mercado se permitió una explotación y depredación insostenible en el tiempo sobre los recursos marinos y forestales; un crecimiento industrial poco regulado con sus implicaciones en contaminación e hiperconcentración urbana; una modernización agrícola con el predominio de las

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consideraciones de la rentabilidad económica sobre las ecologistas; y en políticas de desarrollo urbano basadas en la oferta y demanda, para citar algunos efectos.

Este modelo de desarrollo capitalista llevado al extremo, condujo a la concentración del poder económico y político, alejó las posibilidades de cooperación e introdujo el enfrentamiento con la propia naturaleza. Por ejemplo, ya en 1974 se promulga un decreto-ley sobre una bonificación por reforestación que favoreció fundamentalmente a grandes inversionistas ligados con el rubro de la empresa maderera, que a su vez, indirectamente fomentó la extinción del bosque nativo.

Es decir, a partir del modelo de desarrollo implementado, el problema medio ambiental se hizo cada vez más dramático en nuestro país. Por lo tanto, nos enfrentamos una serie de desafíos que plantean la incorporación de los temas ambientales y de conservación de los recursos naturales en la agenda de desarrollo económico. Me referiré brevemente a aquellos problemas que aparecen más urgentes en el debate nacional:

En primer lugar están los problemas que dicen relación con la explotación de los recursos renovables a un ritmo acelerado que exede la prudencia; y en segundo lugar, los problemas de contaminación que resultan de las actividades humanas de producción y de consumo.

En el área de los recursos naturales renovables hay diversos problemas, pero el que ha dominado el debate público y la agenda legislativa y política, en el último año, es el tema de la administración de los recursos pesqueros. Debido que hasta ahora había imperado un régimen de libre acceso a la pesca, con algunas restricciones como las vedas, se ha puesto en peligro la actividad extractiva futura. Con la discusión de la nueva ley pesquera en Chile se han relevado serias deficiencias en el marco institucional e incluso en normas constitucionales para hacer compatible desarrollo económico y preservación y cuidado del medio ambiente.

Un segundo tema que ha centrado una atención significativa en la opinión pública y en las autoridades, es el problema del bosque nativo. Se ha explotado el bosque nativo, fundamentalmente, para abastecer las demandas internacionales por astilla para la producción de celulosa de fibra corta, sin asegurar la mantención de estos recursos.

Otro problema es la erosión de los terrenos agrícolas, especialmente del secano costero, que afecta directamente las condiciones de vida de los pequeños agricultores.

En el área de los problemas de contaminación hay uno que acapara la mayoría de los titulares de la opinión pública en general, especialmente en Santiago, que tiene relación con la calidad del aire.

La contaminación de las aguas es otro gran problema que afecta a las condiciones de vida de la gente y que está deteriorando el medio ambiente. La

descarga de los sistemas de alcantarillado a ríos, lagos y mar, afecta directamente a la calidad sanitaria de las frutas, verduras y mariscos, arriesgando además las actividades recreativas y turísticas. Por otra parte, la descarga de los desechos industriales a las aguas está produciendo la destrucción de ecosistemas. Un caso conocido por todos es el problema de la cuenca del río Bío-Bío en la octava región.

También cabe destacar el deterioro de la calidad de vida de las personas, muy especialmente en el sector urbano marginal, donde la probreza es el principal problema medio ambiental, lo que se hace claramente visible en viviendas inadecuadas, ausencias de áreas verdes y de recreación, problemas de recolección de basuras, etc.

Esta situación, ampliamente reconocida como consecuencia de un uso irracional de los recursos naturales, producto de las concepciones de hombre, sociedad y desarrollo, no sólo se vincula a la posibilidad de sobrevivencia de la humanidad sino que ocasiona una amenaza permanente a la calidad de vida; de ahí la urgencia de que la temática ambiental se constituya en una dimensión fundamental de las políticas sociales y de desarrollo, y en una preocupación activa y permanente de parte de la ciudadanía en la búsqueda de soluciones.

Ya en el Programa de Gobierno del actual Presidente de Chile, se reconoce el gran deterioro ecológico que vive el país y plantea como causales directas las políticas económicas y tecnológicas en uso. Reconoce que la dimensión ambientalista es uno de los elementos centrales de la estrategia de desarrollo dándole al Estado un rol preponderante en la preservación de los equilibrios ambientalistas básicos.

En este sentido, el Gobierno de Chile se plantea por una concepción de desarrollo económico sustentable que se ha expresado en las siguientes ideas fuerzas:

- Preocupación, no sólo por los objetivos materiales, sino también por el desarrollo humano. En este sentido, el término "calidad de vida" representa una concepción más integral de las necesidades humanas.

- Atención prioritaria para conciliar el crecimiento económico con la conservación y el uso racional de los recursos naturales y el medio ambiente, pensando en las generaciones futuras.

- Reconocimiento de que los seres humanos son los recursos más válidos y el desarrollo contribuye a su realización.

- Búsqueda de la igualdad social velando por una distribución equitativa de los productos del desarrollo.

- Promoción y educación, con el objetivo de fomentar mecanismos y toma de decisiones horizontales enfatizando la participación de la sociedad civil.

También el Programa de Gobierno reconoce la necesidad de formular una política ambiental nacional que velara por crear los mecanismos de control social y de participación cuidadana para comprometer en su ejecución a los diferentes

sectores de la sociedad civil. Además de revelar el papel participativo de una comunidad organizada e informada, hay un énfasis por el desarrollo de una educación ambiental que permita y que colabore con la transformación cultural. Es decir, incorporar la dimensión ambiental en la cultura.

Si bien, ya en el poder, el Gobierno actual ha ido legislando sobre algunos problemas específicos, aún no se elabora una ley sobre medio ambiente en términos más globales; es decir, se toman medidas o se legisla sobre problemas concretos y urgentes. Un ejemplo, las leyes que se han formulado para disminuir la contaminación en Santiago.

Es necesario agregar que hay graves conflictos de intereses entre el sector privado y el Estado, como también dentro del mismo sistema de Gobierno para compatibilizar desarrollo económico y programas de apoyo a los sectores desfavorecidos de la comunidad.

Para enfrentar estos problemas, en el ámbito de la organización del apartato del Estado se creó un organismo central, la Comisión Nacional del Medio Ambiente (CONAMA) como coordinador de las competencias de la administración pública en materia ambiental. Una de las subcomisiones que me interesa mencionar es la de Educación por la gran relevancia que se le otorga al cambio cultural ya mencionado. En ella, participan representantes del Ministerio de Educación, Ministerio de Bienes Nacionales, Ministerio de Agricultura, de Universidades, de Corporaciones de Empresarios y de Organizaciones no-Gubernamentales (ONGs), con el propósito de desarrollar una estrategia nacional de educación en esta temática. En abril de 1992 la subcomisión entregará la propuesta al Presidente de la República para impulsar con mayor fuerza y en forma coordinada las iniciativas que se contemplan en ella.

La coordinación de las iniciativas en el campo educacional se considera necesaria para orientar en ciertas perspectivas básicas, pero también, velando para no perder la diversidad y riqueza de las diferentes iniciativas y los diferentes actores involucrados en cada una de ellas. Es así cono se han desarrollado programas educativos en materias ambientales a través de medios de comunicación de masas; creación y activación de grupos ecologistas y ambientalistas, principalmente ONGs y grupos de base que han conformado la red RENACE que cuenta con más de 100 organizaciones que hacen labores de educación y denuncia; activación de cátedras universitarias y programas de entrenamiento en estas variables, y este año se inicían estudios de Maestría en más de una Universidad del país.

Dentro de las diversas iniciativas, interesa destacar la existencia de los Consejos Ecológicos Comunales que están conformados por miembros de la comunidad, que constituyen un recurso ya existente que es posible potenciar con miras a un mayor compromiso y responsabilidad de los individuos y la comunidad con respecto a su entorno ambiental a partir del ámbito comunal. Dicha

potencialidad está dada fundamentalmente por su inserción territorial, la que le permite desarrollar múltiples formas de acción apoyándose en los intereses, necesidades y problemas más cercanos a la gente.

Por otra parte, también a nivel de diferentes sectores del mundo empresarial hay conciencia de la necesidad de preservar el medio ambiente. De hecho, grandes transnacionales instaladas en nuestro país ya están trabajando en esta línea, apoyando investigaciones y también aportando recursos económicos para formación en educación ambiental.

En materia de políticas educativas en el segundo semestre del año 1991, el Ministro de Educación, Sr. Ricardo Lagos, anunció que dentro del cambio de la educación básica y media de los establecimientos educacionales públicos y privados, se establecerán objetivos fundamentales de orden transversal que permean el currículum; es decir, desde la organización escolar hasta los contenidos temáticos. En estos objetivos transversales se integran los temas relevantes de derechos humanos y fomento de la paz; sexualidad y género; cuidado y protección del medio ambiente. Estos temas no tienen que ser traducidos en materia sino que el gran desafío es incorporarlos al currículum escolar en forma permanente.

Aunque existen estas diversas iniciativas, la gravedad del daño ambiental persiste. Sabemos que esta es una tarea a largo plazo. Pero interesa resaltar que la labor de sensibilización y de formulación que han desarrollado los diferentes actores, desde el aparato estatal o la sociedad civil, sumada a los graves problemas que enfrentamos en la vida cotidiana, han creado una creciente preocupación ciudadana al respecto. Sin embargo, dicha preocupación no logra transformarse, aún, en acciones que comprometan al grueso de la ciudadanía y las acciones que logran articularse para enfrentar este problema son claramente insuficientes.

Política Ambiental en Colombia: Normatividad, Práctica y Perspectivas

CARMELA OSSA HENAO

I. Marco Institucional

La política ambiental de Colombia puede ser analizada a partir de dos marcos institucionales. Uno formado por el cuerpo legislativo de origen nacional, y el otro integrado por los tratados y otros instrumentos internacionales de carácter bilateral y multilateral, en los cuales es parte el país. Estos marcos determinan cuatro niveles generales de protección del ambiente, a saber: nacional, subregional, regional y global.

En el plano nacional, Colombia fue el primer país de América Latina en definir una política ambiental mediante la utilización de mecanismos legislativos(1). En diciembre de 1973, poco tiempo después de la realización de la Conferencia de Naciones Unidas sobre Ambiente Humano (Estocolmo, 5-16 de junio de 1972), se dicta una ley que determina los principios rectores de esta política y faculta al gobierno nacional para reformar la legislación hasta el momento vigente sobre recursos naturales y preservación ambiental, expidiendo el Código Nacional de Recursos Naturales Renovables y de Protección al Medio Ambiente.

La filosofía orientadora de la legislación nacional es de naturaleza antropocéntrica, en contraposición a otros enfoques, generalmente más frecuentes, que privilegian consideraciones de carácter económico, ecológico o naturalista(2). Tal enfoque aparece claramente cuando se observa que la finalidad de la política

(1) Raúl Brañes, *Institutional and Legal Aspects of the Environment in Latin America, Including the Participation of Nongovernmental Organizations in Environment Management*, Washington D.C., BID, 1991, p. 40.

(2) Para un estudio ver, A.A. Cançado Trindade, "The Parallel Evolutions of International Human Rights Protection and of Environmental Protection and the Absence of Restrictions Upon the Exercise of Recognized Human Rights", 13 *Revista del Instituto Interamericano de Derechos Humanos* (1991) pp. 35-76, y fuentes ahí citadas.

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que se busca trazar es la defensa de la salud y el bienestar de todos los habitantes del territorio nacional, o cuando se reconoce que el ambiente es necesario para la supervivencia y el desarrollo económico y social de los pueblos (Art. 1 Ley 23/73; art. 1 decreto 2811/74).

En este orden de ideas, el medio ambiente es considerado como patrimonio común. Su mejoramiento y conservación como actividades de utilidad pública, siendo responsabilidad del Estado la ejecución de la política ambiental con la participación de los particulares. Merece especial mención, en cuanto al deber de los particulares de proteger el ambiente, el principio según el cual la propiedad privada sobre los recursos naturales renovables se deberá ejercer como función social y la reivindicación de la propiedad de los recursos naturales renovables como pertenecientes a la Nación, ambos incorporados en el texto normativo.

El Código Nacional de Recursos Naturales Renovables, expedido en 1974, incorpora conceptos que van más allá de los establecidos en la ley de facultades concedidas al gobierno por el Congreso. El ambiente pasa a ser considerado como patrimonio común de la humanidad y "necesario para la supervivencia y el desarrollo económico y social de los pueblos". Son tres los principales vectores de la política ambiental diseñada en el Código. El primero, "la preservación y restauración del ambiente y la conservación, mejoramiento y utilización racional de los recursos naturales renovables, según criterios de equidad que aseguren el desarrollo armónico del hombre y de dichos recursos, la disponibilidad permanente de estos y la máxima participación social, para beneficio de la salud y el bienestar de los presentes y futuros habitantes del territorio nacional" (artículo 2°, § 1°).

El segundo, la prevención y el control de los efectos nocivos de la explotación de los recursos naturales no renovables sobre los demás recursos (artículo 2°, § 2°). Y el tercero, la reglamentación de la conducta humana (individual, colectiva y pública) respecto del ambiente y los recursos naturales renovables y las relaciones que surjan del aprovechamiento y conservación de tales recursos y del medio ambiente (artículo 2°, § 3°).

La legislación vigente reúne, bajo un mismo código, la reglamentación relativa a diversos aspectos cuya singularización o selección es resultado inmediato de la orientación de la política ambiental trazada y del estado de evolución de la concepción del ambiente en el período de su expedición. Se distingue entre los aspectos regulados la definición de una serie de conceptos, entre ellos el del propio medio ambiente, la contaminación, los bienes contaminables, los elementos contaminantes.

Igualmente, se legisla sobre el manejo de recursos naturales renovables, considerados como tales los seguientes: atmósfera y espacio aéreo nacional, agua en cualquiera de sus estados, tierra, suelo y subsuelo, flora, fauna, fuentes primarias de energía no agotables, pendientes topográficas con potencial energético, recursos geotérmicos, recursos biológicos, recursos del paisaje. Se individualiza, también, la

defensa del ambiente y los recursos renovables contra la acción nociva de los fenómenos naturales y se establecen normas relativas a los denominados elementos ambientales tales como, basuras, residuos, desechos, desperdicios, ruido, condiciones de vida resultantes de asentamientos humanos urbanos y rurales y bienes producidos por el hombre en cuanto incidan o puedan incidir sensiblemente en el deterioro ambiental.

Asimismo, se determinan los instrumentos o medios para la ejecución de la política ambiental, tales como incentivos financeiros y fiscales, coordinación institucional en los diferentes niveles nacional y municipal, participación comunitaria y sistemas educativos y de entrenamiento, servicios sociales, reservas presupuestales de destinación exclusiva para programas de preservación ambiental e instrumentos para exigir responsabilidad por la preservación y el manejo adecuado de los recursos naturales y el deber de reparación por el daño causado.

Si bien el sistema normativo hace clara referencia al ambiente como un derecho y un deber del ciudadano, es con la nueva Constitución de 1991 que se viene a establecer con mayor claridad el derecho al ambiente como un derecho de la persona, como un derecho humano en sentido integral. En efecto, en el Capítulo 2 de la Constitución Política de Colombia, referente a los derechos sociales, económicos e culturales, se reconoce expresamente el derecho a la salud y al saneamiento ambiental, al igual que a una vivienda digna; todos estos elementos constitutivos del concepto derecho al ambiente, desde un punto de vista global, que involucra condiciones sanas de vida, asentamientos humanos adecuados y salud. Al mismo tiempo, se establece, como uno de los deberes de la persona y del ciudadano, el deber de proteger los recursos naturales del país y velar por la conservación de un ambiente sano.

La preocupación con la defensa del ambiente, llevó al constituyente colombiano a desarrollar la noción de función social de la propiedad, concepto ampliamente reconocido a nivel constitucional y legal pero rara vez definido, señalando que esta incorpora, entre otros aspectos, una función ecológica(3).

El derecho que toda persona tiene a gozar de un ambiente sano se encuentra expresamente consagrado en el artículo 79 de la Carta Constitucional, al mismo tiempo que la garantía de que la comunidad tendrá participación en las decisiones que puedan afectar el ambiente, avance significativo en el camino de la democratización de la toma de decisiones relativas a la preservación del ambiente. En este capítulo se establecen también varias obligaciones a cargo del Estado en favor de la protección del ambiente: planificación para garantizar el desarrollo sustentable de los recursos naturales, su conservación y restauración; fomento de la educación para proteger y conservar; prevención y control del deterioro ambiental mediante la utilización de instrumentos legales y de común aplicación, como sanciones pecuniarias y la obligación de reparar los daños causados.

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(3) Constitución Política de Colombia, 1991, Art. 58 inc. 2.

La política ambiental recientemente delineada por vía constitucional, incorpora varios otros elementos de protección y prevención del deterioro ambiental, entre los cuales señalamos, como más significativos, la cooperación internacional para la protección de los ecosistemas situados en las zonas fronterizas, el control sobre la utilización de recursos genéticos y la prohibición de cualquier tipo de actividad relativa a armas químicas, biológicas y nucleares y a la introducción al territorio nacional de residuos nucleares y desechos tóxicos.

Todos estos derechos consagrados constitucionalmente requerirán, por disposición constitucional, posterior desarrollo legal pues no se encuentran comprendidos entre los derechos que la propia Constitución establece como de aplicación inmediata. Asimismo, su protección también exigirá posterior desarrollo legal de la norma constitucional que establece la acción popular para la protección de los derechos e intereses colectivos relacionados con el ambiente y la posibilidad de contar con recursos, acciones y otros procedimientos apropiados para la protección de los derechos individuales, de grupo o colectivos frente a la acción u omisión de las autoridades.

En lo referente a la protección del ambiente con base en instrumentos internacionales de carácter bilateral o multilateral, pueden señalarse dos tendencias en la práctica nacional. La primera, consistente en regular por vía de la legislación interna la política orientadora de los aspectos relacionados con recursos naturales renovables compartidos con países limítrofes, la cual determina que los acuerdos o tratados existentes deben ser actualizados o complementados y nuevos acuerdos se deben celebrar con miras a procurar el intercambio de informaciones necesarias para el planeamiento del desarrollo y el uso de recursos; la recíproca y previa comunicación de las alteraciones o desequilibrios ambientales originados en acciones realizadas en los respectivos territorios; la administración conjunta de recursos naturales renovables; la adopción de medidas para no causar perjuicios a otros países con el uso interno de los recursos naturales no renovables. La legislación enumera tales recursos naturales así: cuencas hidrográficas, ríos que limitan o atraviesan, aguas superficiales, subterraneas y cursos naturales conexos; bosques fronterizos, especies de fauna, aguas marítimas nacionales, atmosfera y alteraciones climáticas, yacimientos geotérmicos.

La ley determina igualmente obligaciones a cargo del Estado para procurar evitar o prohibir la utilización de elementos ambientales y recursos naturables renovables que puedan producir deterioro ambiental en países no vecinos, en alta mar o su lecho, en la atmosfera o espacio aéreo más allá de la jurisdicción territorial. Y va hasta determinar la realización de gestiones para obtener que otros países adopten actitudes semejantes.

El segundo aspecto predominante en la política ambiental trazada por medio de instrumentos internacionales es el relativo a los diversos mecanismos de cooperación existentes. Además de los programas y proyectos con la participación de organismos internacionales intergubernamentales y otros países, son de especial

relevancia los sistemas de cooperación subregional, principalmente en el marco del Tratado de Cooperación Amazónica. Instrumento pionero que ya en la época de su negociación, 1978, preconizaba el equilibrio entre el crecimiento económico y la preservación del medio ambiente, reflejando así un alto grado de conciencia de los países sobre el tema.

En 1989, los países miembros del Tratado, reconociendo la importancia del tema ambiental, establecen la Comisión Especial de Medio Ambiente de la Amazonía (CEMAA), que desde la fecha de su creación hasta el momento ha propuesto programas sobre diversos temas como: zonificación ecológica-económica y monitoreo de las alteraciones en el uso de la tierra; ecología, biodiversidad y dinámica de poblaciones; fauna silvestre; recursos hidrobiológicos; defensa y aprovechamiento de los recursos forestales; planificación y manejo de áreas protegidas.

Otros mecanismos de cooperación actuan paralelamente en áreas de ciencia y tecnología vinculadas al ambiente. Entre estos se pueden citar el Convenio Andrés Bello, el Pacto Ambiental del Caribe (PAC) y algunos programas iniciativa del Parlamento Andino(4).

II. Práctica Nacional en Materia Ambiental

La ejecución de la política ambiental ha venido adecuándose a medida que las circunstancias lo exigen, dando lugar a un manejo descentralizado con responsabilidades a cargo de entidades públicas a nivel departamental. Asimismo, algunas entidades de naturaleza privada colaboran en esta tarea siguiendo parámetros establecidos a nivel central.

En el cuatrienio 1986-1990 se lanzó la política de alcance nacional conocida como la "Movilización Verde", que comprendía once programas: Plan Gigante Nacional de Reforestación; Plan de Recursos Pesqueros; Plan de Conservación y Fomento de Fauna Silvestre; Control de Contaminación de Agua, Suelo y Aire; Plan de Seguimiento de Proyectos de Desarrollo; Plan de Ordenamiento de Parques Nacionales; Sistema de Información y Formación Ambiental; Plan de Conservación y Manejo de Areas Naturales; Plan de Integración Interinstitucional e Internacional(5).

Las principales actividades de protección se han centrado, en realidad, en el establecimiento de sistemas de control y vigilancia y en la realización de proyectos de manejo de cuencas, investigación forestal, reforestación, repoblación e investigación faunística, control de erosión, tratamiento de aguas, acuacultura y

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(4) *Informe Nacional de Colombia a la CNUMAD*, Diciembre/1991.

(5) *Política del Gobierno Nacional para la Defensa de los Derechos de los Indígenas y la Conservación Ecológica de la Cuenca de la Amazonia*, República de Colombia, 1989.

control de contaminación del aire[6]. Merece especial mención la promoción de la participación comunitaria a nivel municipal mediante el fomento de la creación de asociaciones o grupos cívicos (conocidos como concejos o cabildos verdes) para estudiar los temas ambientales, por su significativa importancia democrática y educativa.

La actividad institucional en este campo ha conseguido logros significativos, como son: la creación de un Sistema de Areas de Manejo Especial y Parques Nacionales que cubre aproximadamente el 10% del territorio nacional (33 parques nacionales naturales); mantenimiento de aproximadamente 46% del territorio nacional con cobertura boscosa[7]; estudios básicos cartográficos y de suelos y planteamiento de una política de conservación amazónica para garantizar la vocación forestal de los suelos.

Uno de los programas pilotos en materia de protección es el Fondo para la Protección y Recuperación del Medio Ambiente, cuyo objetivo general es desarrollar un plan integral para la protección y recuperación de las cuencas hidrográficas de la zona cafetera y su influencia, asegurando la disponibilidad de agua[8].

En cuanto a la actividad educativa - uno de los pilares de la política ambiental en general - , desde 1978 fueron reglamentados los artículos del Código de Recursos Naturales relativos al tema[9].

En la década de los ochenta comienza una amplia campaña de divulgación y estudio de los diversos aspectos relacionados con el ambiente, inicialmente a nivel universitario mediante la realización de seminarios y talleres y la creación de unidades dedicadas a la investigación.

Las entidades del Estado responsables tanto por la política ambiental como por la educación en general desarrollan proyectos de carácter nacional, para coordinar e impulsar las actividades realizadas por diferentes entidades en esta area. En este sentido se lanza el "Plan Nacional de Educación Ambiental 1991-1994", cuya primera fase es el "Proyecto de Educación Ambiental en la Educación Primaria". De otro lado, impulsadas por el creciente interés de algunos sectores conscientes de la sociedad, comienzan a surgir también en este período diversas entidades u organizaciones sin ánimo de lucro (ONGs) que se dedican también a la divulgación e investigación de temas relacionados con el ambiente.

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(6) Idem.

(7) Plan de Acción Forestal para Colombia, en *Boletin de la Planificación*, No. 12, oct. 1988.

(8) *Manual de Recursos Naturales Renovables*, República de Colombia, 1986.

(9) *Informe Nacional de Colombia a la CNUMAD*, Diciembre/1991.

III. Principales Lineamientos de la Política Ambiental Frente a los Retos Futuros

El Plan de Desarrollo Económico y Social de Colombia para el cuatrenio 1990-1994 prevé una política y programas de conservación y uso sustentable del gran patrimonio natural del país, representado en la existencia de una mega-diversidad distribuída a lo largo y ancho de todo el territorio nacional, en sistemas tan disímiles como el andino, el amazónico, el orinocense y las cuencas del Pacífico y la del Caribe. Los programas hacen relación, entre otros temas ambientales, a la investigación, educación, áreas de conservación, gestión ambiental en ecosistemas únicos y en resguardos indígenas y sistemas alternativos de producción y generación de energía.

Las prioridades de la política ambiental nacional están determinadas por la necesidad de proteger el ambiente y los recursos naturales de manera compatible con las metas de desarrollo nacional y el logro de un nivel de vida adecuado para la población. Es por eso que, simultáneamente con los proyectos relativos a la conservación y desarrollo sustentable de los bosques, de la biodiversidad y de las aguas, son también prioritarios el desarrollo rural sustentable y la solución de la problemática de los asentamientos humanos urbanos(10).

La experiencia lograda a lo largo de casi 20 años de coexistencia con la normatividad relativa a los recursos naturales y el medio ambiente, si bien no ha evitado la sobre-explotación de los suelos, la deforestación, la contaminación de las aguas y de la atmósfera, ha creado una conciencia colectiva que ha contribuído a disminuir, en cierto grado, las consecuencias nocivas de las mismas. Sobre las bases ya existentes ampliadas con nuevos conocimientos tecnológicos se trazan políticas destinadas, al igual que las directrices pioneras (*supra*), al bienestar y al desarrollo económico y social de la población.

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(10) Cf. *Informe Nacional de Colombia a la CNUMAD*, Diciembre/1991.

El Problema del Medio Ambiente en Mexico

LORENA GONZÁLEZ VOLIO

I. *Introducción*

Era de esperar que el acalorado debate iniciado en los años sesentas y setentas entre desarrollo y conservación se resolviera a favor de la segunda. El hombre occidental, cuya cultura está desarraigada de su ambiente, ha impulsado el desarrollo material como el fin último de su existencia, al contrario de otras culturas especialmente las autóctonas de América, que convivieron por siglos en perfecta armonía con la naturaleza y consideraron al hombre parte de su universo biológico.

La humanidad entera se enfrenta a una crisis ambiental que cuestiona la relación y la convivencia armónica entre la sociedad y la naturaleza. Esta cruda realidad nos ha enfrentado a un problema que no tiene más que una solución, o conservamos el ambiente y garantizamos nuestra supervivencia o continuamos el desarrollo desenfrenado y nos enfrentamos a nuestra propia destrucción.

Uno de los países en donde esta dicotomía es especialmente visible es México. En lo que respecta al medio ambiente, este país ha estado últimamente en el foco de atención del mundo entero, por la gravedad de los efectos de la contaminación. Por ello es importante echar un vistazo a las diferentes facetas del problema y compartir las experiencias mexicanas en la solución o atenuación de esa crisis ambiental profunda.

II. *Diagnostico del Problema del Medio Ambiente en México*

A) *La Contaminación del Aire:*

Como principales problemas ambientales que sufre México en la actualidad, los concernientes al aire y al agua sobresalen por su gravedad y difusión,

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agudizados por la localización geográfica de Ciudad México - situada en un valle rodeado de montañas, sobre lo que era un lago que impide la circulación apropiada del aire. Indudablemente, este factor ayuda a mantener atrapados y estancados los gases tóxicos y otros tipos de contaminantes atmosféricos, principalmente en la época seca de verano. La sequía y la ausencia de viento en esta estación del año, impiden que se disipe la concentración de contaminantes principalmente en el aire.

Como principal fuente de este fenómeno, están las fábricas y los automóviles de todo tipo. Se estima que 36.000 industrias, que conforman aproximadamente la mitad de la industria mexicana, están situadas dentro de la Ciudad de México. De estas industrias, 4 mil emplean procesos de combustión o transformación que generan emisiones al aire significativas(1). Además, en la ciudad circulan 3 millones de automóviles, camiones y buses, que representan el "76% de los contaminantes emitidos a la atmósfera en la Ciudad de México"(2). Las emisiones de los vehículos conforman un 80% de las emisiones contaminantes, pero lo más impresionante es que un 30% de estos contaminantes, podrían ser eliminados simplemente si los vehículos fueran revisados sistemáticamente y sometidos a un afinamiento de sus motores (tune-up).

Dentro de la categoría de sustancias contaminantes de la atmósfera, la que representa una de las más graves amenazas a la salud, es la cantidad de plomo que contienen los combustibles. Estudios han revelado que una gran proporción de recién nascidos en la Ciudad de México, tienen en la sangre un nivel de plomo que puede causar deficiencias intelectuales y psicomotoras, además de daño cerebral(3). La compañia estatal Petroleos Mexicanos, PEMEX, al enterarse del alarmante resultado de este estudio, introdujo al mercado en 1986, un nuevo tipo de gasolina con un contenido más bajo en plomo; pero el nuevo combustible, para sustituir el plomo, contiene una mezcla de hidro-carbonos que ha incrementado enormemente el nivel de ozono desde su introducción, llegando a sobrepasar en un 60%, los niveles de seguridad promedio establecidos por la Organización Mundial de la Salud(4).

Se estima además que la respiración de este aire tan contaminado es tan grave, que equivale a que un niño empiece a fumar desde su nacimiento, aparte de que puede causar problemas pulmonares crónicos(5). Pero la contaminación atmosférica no sólo causa problemas físicos, sino que también vienen aparejados síntomas psicológicos, como el aumento de la agresividad, la depresión y principalmente la irritabilidad de las personas que viven en estas condiciones.

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(1) Presidencia de la República, *Agenda de México*, México, Dir. de Publicación, Julio 1991, pag. 132.

(2) *Op. cit.* pag. 132.

(3) World Resources Institue, *World Resources 1990-1991*, Estados Unidos de América, Oxford University Press, 1990, pg. 40.

(4) *Op. cit.* pag. 40.

(5) *Op. cit.* pag. 40.

Aunado a la contaminación del aire, llama la atención también el uso irrestricto de otras fuentes contaminantes que contribuyen enormemente al problema en la ciudad de México. De las industrias que operan dentro del area metropolitana, "250 procesan sustancias que producen residuos peligrosos"(6), y el 90% de los residuos tóxicos generados por la industria son vertidos al drenaje, contaminando las aguas y el area metropolitana de la ciudad de México - ZMCM - sólamente hay 11 plantas de tratamiento de aguas y una para el tratamiento de aguas industriales, y sólo algunas instaladas por empresas privadas para su propio uso. De forma las aguas tratadas y reutilizadas no son ni el 3% del total. En todo el país existen solamente 402 plantas pero 70 están fuera de operación y el resto opera debajo del 80% de su capacidad(7).

El problema del ambiente es tan grave, que ocupa constatemente las primeras planas de los principales periódicos mexicanos, informando así a la población la concentración de contaminantes en el ambiente y los efectos que éstos producirán durante los próximos días. No con sorpresa la mayoría de la población - el 85% - es conciente de la magnitud del problema; el 69% reportó sufrir de irritación de los ojos; 54% de irritación de la garganta; el 39% de dolor de cabeza, etc(8).

Con el fin de proteger a la población, se mide diariamente la concentración de los contaminantes, se ha diseñado el Indice Metropolitano de la Calidad del Aire "IMECA" - que es la escala de pureza del aire empleada para medir la condición diaria del ambiente. La medición de entre los 101 y 200 puntos de esta escala, causa molestias menores en personas sensibles; de 201 a 300 puntos aumenta las molestias e intolerancia relativas al ejercicio en personas con padecimientos respiratorios y cardiovasculares y se presentan ligeras molestias en la población en general y de 301 a 500 puntos IMECA, hay síntomas e intolerancia al ejercicio en la población sana. Desafortunadamente, ya no son días aislados los que llegan a tener niveles de contaminación tan altos como pueden ser los 250 y 350 puntos IMECA. Durante los primeros meses del presente año y en especial en marzo y abril ya se han presentado varias crisis, la más grave fue la del 16 de marzo de 1992, con 398 puntos IMECA, y se considera que ha sido la más alta concentración de contaminación registrada en la historia del Distrito Federal y su zona metropolitana(9).

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(6) *Id. supra* nota 2.

(7) *En Nacional*: Periódico de México. Sábado 4 de abril. Página 8 a).

(8) *Id. supra* nota 7.

(9) *El Excelsior* (periódico mexicano), Martes 17 de marzo de 1992, México D.F. pg. 1.

A-1) Soluciones al Problema:

Los niveles tan altos de contaminación registrados en este año, han obrigado a las autoridades federales y municipales a tomar medidas en extremo severas que afectan las diversas actividades de la ciudad. Por ejemplo, en estos dias, se ordenó paralizar hasta el 75% de las fábricas, se prohibió la circulación del 50% de los vehículos oficiales, se han paralizado las funciones no indispensables de los hospitales del Valle de México en las cuales se utiliza combustible y se paralizan también las actividades de asfaltado y de pintura en las calles. Las medidas que se ordena seguir a la población en general, también son muy estrictas, como por ejemplo que se supriman los recreos y las prácticas de actividades al aire libre en los centros de educación preescolar, primaria, y secundaria; incluso, se han suspendido clases, como en efecto sucedió el 17 de marzo pasado.

Como es fácil de suponer, este tipo de medidas representa para la industria del valle un precio alto que todo el país debe pagar por décadas de negligencia y abandono en este campo, pues el paro provoca - desde luego - pérdidas económicas muy cuantiosas(10). Además, no es fácil reducir las operaciones de las fábricas, pues hay procesos industriales que no pueden ser reducidos tan drástica ni rápidamente. Lo anterior nos expone a un panorama aún más triste; no sólo hay que lidiar con el problema ambiental en la Ciudad de México, sino que éste proceso de descontaminación además presenta un efecto negativo contra la producción del país y resalta una vez más el debate entre desarrollo y convervación ambiental.

No obstante, hay sectores de la población que creen que las medidas adoptadas son insuficientes "y que estamos a merced de que haya o no vientos en la capital para que nosotros nos envenenemos o no"(11).

B) La Contaminación del Agua

La Ciudad de México como se dijo, también sufre de problemas en lo que respecta al agua. La mayor parte del agua es utilizada por el sector doméstico y de servicios, mientras que la industria sólo ocupa el 16% del total suministrado pero genera aproximadamente el mísmo porcentaje de desechos, con el agravante de que este tipo de desechos son mucho más nocivos; son substancias altamente contaminantes. Así, se podría decir que el 90% de los residuos tóxicos y peligrosos generados por la industria son vertidos al drenaje, que llega por los ríos Moctesuma y Pánuco hasta el golfo de México. Se estipula que el total de aguas reutilizadas después de algún tipo de tratamiento llega a menos del 3% de la oferta total. A nivel nacional, sólo hay 402 plantas de tratamiento que procesan, en principio, apenas

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(10) *El Excelsior* (periódico mexicano), Sábado 8 de febrero de 1992, pg. 10 A.

(11) *Op. cit.* pg. 10 A.

15% del caudal suministrado. Y, de este total anteriormente citado de plantas existentes, 70 no operan, mientras que el resto lo hace por debajo del 80% de su capacidad. Sumado a estas desilusionantes cifras, hay que agregar que los costos de inversión y de operación de una planta de tratamiento son muy elevados, por lo que son pocos los inversionistas privados o los municipios que se interesan en instalar este tipo de plantas.

Los servicios urbanos de recolección de basura o de residuos sólidos tampoco ofrecen una alentadora perspectiva. En los países del Tecer Mundo, este tipo de servicios corrientemente adolecen de eficiencia, y México no es la excepción. Un estudio de 1989 sobre el sistema de recolección de desechos sólidos, llevado a cabo en la Ciudad de México, reveló que el 38% de los vehículos recolectores de basura en el Distrito Federal, y el 19% de los vehículos de zonas contíguas, estaban fuera de servicio por mantenimiento y reparación(12).

Finalmente, la creciente población de las distintas ciudades latinoamericanas puede llegar a empeorar las crisis que están viviendo estas ciudades, en mayor o menor escala. La presión que pueden ejercer estas cada vez mayores poblaciones. pueden entorpercer y paralizar las labores y estrategias planteadas por el gobierno En el caso específico de México, en 1990 vivían en el área metropolitana 19 millones de personas, y se estima que para el año 2000, esta cifra llegue a ascende a los 24,4 millones de habitantes, ocasionando un problema adicional que necesit: ser resuelto por las autoridades gubernamentales.

II. *Estrategias Tomadas y Desarrolladas con Respecto al Medio Ambiente*

Los estrategias tomadas por las autoridades mexicanas se centran principalmente en la solución de los problemas concernientes al aire y al agua, que como se apuntó, sin duda alguna son los que tienen mayor relevancia en la actualidad por su gravedad. Desde 1988, la situación se tornó tan crítica en lo que respecta a la contaminación del aire, que el gobierno se vió obligado a tomar medidas drásticas, como son los programas de control y verificación de emisiones y aplicación del programa HOY NO CIRCULA, el cual prohíbe el usar el vehículo a los particulares una vez por semana. Se estima que esta última medida disminuye por sí sola la contaminación en 2.000 toneladas al día. Ultimamente, se ha estado aplicando lo que se ha denominado el DOBLE HOY NO CIRCULA, en el que los vehículos van a dejar de ser utilizados dos días a la semana, en vez de sólo un día. Incluso, en la situación crítica del pasado marzo, los días sábados y domingos también se vieron afectados.

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(12) World Resorces Institue, *World Resources 1990-1991*, Estados Unidos de América, Oxford University Press, 1990, pg. 72.

El momento por el que pasa la Ciudad de México ha producido el principio fundamental de la reciente política ambiental: el que contamina paga, que es la máxima esencial implícita dentro de las medidas establecidas para frenar el crecimiento de la contaminación, medidas que se encuadran dentro de los términos fijados por la Constitución Política de México, por la Ley General del Equilibrio Ecológico y Protección al Ambiente, y por el Programa Nacional de Protección al Medio Ambiente 1990-1994.

Dentro de los objetivos planteados tanto para el futuro y el presente, de gran importancia ha sido el anuncio por parte del Presidente Carlos Salinas de Gortari, a principios de 1991, de la clausura definitiva de la Refinería 18 de Marzo, uno de los principales emisores de contaminantes en el Valle de México que significa una pérdida de varios miles de millones de dólares, por los costos de desmantelamiento y reubicación de la planta.

Los demás objetivos se pueden resumir en los siguientes puntos:

A. La introducción obligatoria a partir del modelo 1991, de convertidores catalíticos en todos los vehículos a gasolina, lo que llegará a reducir en más del 60% la emisión de contaminantes.

B. La ampliación del METRO en 34 kilómetros más.

C. La reordenación y la ampliación del sistema de transporte eléctrico.

CH. La continuación del programa HOY NO CIRCULA.

En lo que se refiere a la contaminación industrial, el Programa de Inspección y Vigilancia a la Industria ha realizado hasta julio del año pasado 311 inspecciones, practicando en ellas 2 clausuras totales definitivas, 110 clausuras parciales temporales y 114 clausuras totales temporales. De estas clausuras, surgió la firma de 254 convenios con industrias situadas dentro del Valle de México para que cumplan con las normas técnicas, es decir, para que sus emisiones no rebasen los índices permisibles, conjuntamente con 1335 convenios firmados a escala nacional, convenios para que en "el plazo más breve que permitan sus recursos y posibilidades, pero no mayor a 36 meses a partir del 15 de noviembre de 1990, sustituyan procesos contaminantes o instalen equipos de control para que sus emisiones no rebasen las normas técnicas ecológicas pertinentes". Este es un formidable esfuerzo por parte de las autoridades mexicanas y denota que la voluntad política es el principal elemento para iniciar la campaña de descontaminación de nuestras ciudades(13).

Algunos han hecho notar que, según el acuerdo, las industrias tienen plazo hasta noviembre de 1993 para cumplir con las modificaciones ordenadas pero que debido a la alta contaminación registrada en estos momentos, este plazo deberia ser reducido.

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(13) *El Excelsior* (periódico mexicano), 14 de febrero de 1992, pg. 10.

El cumplimiento de este acuerdo está sujeto a la verificación por parte de las autoridades, y las empresas que no estén en posibilidades de cumplir serán clausuradas temporal o definitivamente, y deberán reubicarse fuera del Valle de México incorporando tecnologia no contaminante.

Finalmente, gran importancia tiene la reciente formada Comisión para la Prevención y Control de la Contaminación Ambiental en la Zona Metropolitana del Valle de México, con carácter permanente, la cual tiene como objetivo definir y coordinar las políticas, programas e proyectos, en materia ecológica, así como recomendar y supervisar la ejecución de las acciones que las dependencias y entidades del gobierno deban emprender contra la contaminación en esta zona geográfica. Esta Comisión también está a cargo de dictar y velar por la ejecución de las medidas necesarias que deban adoptarse cuando los niveles de contaminación sobrepasen los límites establecidos.

Para solucionar la crisis surgida por la escasez del agua potable, el gobierno "suscribió un acuerdo para aprovechar cabalmente los recursos hidráulicos e iniciar la rehabilitación de la cuenca Lerma Chapala, de donde procede la mayor parte del agua que se utiliza en el Valle de México. Este programa tiene por objeto evitar que se viertan aguas tóxicas en el río, y propone la construcción de plantas para el tratamiento de aguas residuales, la reforestación a lo largo del río Lerma, y la creación de un complejo hidráulico y pesquero en el Lago de Chapala"(14).

Además, en la nueva Ley Federal de Derechos en Materia de Agua, bajo el principio implícito anteriormente citado, *el que contamine que pague*, las industrias están obligadas a pagar a la Comisión Nacional de Agua ciertas cuotas, por el derecho de uso, aprovechamiento, y descarga de este recurso. Las cuotas se fijan de acuerdo con las características de la descarga, en términos de contaminación.

III. Consideraciones Finales

Finalmente, no todo son malas noticias. Una de las medidas implementadas ha sido la conversión de la deuda externa por la naturaleza, la cual se ha convertido en tiempos recientes como un medio importante para abatir la deuda externa comercial de un país. "La economía que recurre a este sistema emite instrumentos financieros equivalentes al monto de su débito a fin de financiar proyectos en materia de ambiente. En una transacción de ese tipo intervienen un grupo de conservación ambiental, la economía deudora y el banco acreedor"(15). México, en febrero de 1991, firmó un acuerdo de este tipo con el grupo Conservation

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(14) Presidencia de la Republica, *Agenda de México*. Dirección de Publicación, Julio de 1991, pg. 134-135.

(15) GOMEZ MINUJIN, (Facundo), La conversión de deuda por naturaleza. *Revista de Comercio Exterior*, México, Núm. 3, marzo 1992, pg. 263.

International, el cual adquirió cuatro millones de dólares de deuda comercial mexicana. Por su lado, México se comprometió a invertir el equivalente a 2.6 millones de dólares en pesos mexicanos en proyectos ambientales, que deberán estar concluídos en 1994. Principalmente, este dinero se utilizará para preservar el bosque tropical de la región lacandona, el más grande de América del Norte, además de establecer centros de investigación en esa área.

IV. Resultados ya Visibles

En cuanto a datos que reflejen los efectos positivos o negativos de la aplicación de los diferentes programas, actualmente todavía no hay resultados visibles. Esto dado que la mayoría de las medidas tomadas se están poniendo en práctica en la actualidad, se están desarrollando apenas.

No obstante, lo que se podría considerar como un resultado exitosamente positivo, es el fuerte impacto psicológico que estos problemas han causado en la población, preocupando a los individuos y haciéndolos actuar. Esto se refleja en el clima de aprobación imperante en cuanto a las más recientes medidas establecidas por las autoridades, con la intención de atender a la emergencia ecológica. Por ejemplo, en una encuesta realizada en marzo de 1992 acerca de la situación ecológica en la zona metropolitana, por el periódico mexicano *El Nacional*, se estableció que el 81% de los entrevistados se manifestó de acuerdo con la decisión de establecer el programa DOBLE HOY NO CIRCULA. Este porcentaje se reduce un poco, a 72% al considerarse solamente la población que cuenta con automóvil(16).

Asimísmo, el 85% de los entrevistados consideró que la situación ambiental de la Ciudad de México es mala o muy mala. En añadidura, al preguntar si las medidas tomadas eran suficientes para atacar el problema, sólo la tercera parte consideró que sí, mientras que las otras dos terceras partes no están satisfechas con éstas, ya que consideran que las implementadas hasta el momento son insuficientes.

Como conclusión, aunque todavía no contamos con datos y cifras que puedan describirnos gráficamente cuáles han sido los resultados de los programas y medidas implementadas, sí se ha avanzado en un campo sumamente importante, quizás el más importante: haber logrado la concientización de la población. Se podría considerar como un área de vital importancia, porque sin la comprensión y el deseo de ayudar de los integrantes de la ciudad, niguna estrategia gubernamental, por más buena que sea, podría lograr su efectiva aplicación.

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(16) *El Nacional* (periódico mexicano), sábado 4 de abril de 1992, pags. 1, 8, 9.

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PARTE / PART V

COMUNICACIONES / COMMUNICATIONS

(Enviadas al Seminario / Forwarded to the Seminar)

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El Instituto Interamericano de Derechos Humanos y el Medio Ambiente:

UN SALUDO AL SEMINARIO INTERAMERICANO SOBRE DERECHOS HUMANOS Y MEDIO AMBIENTE

SONIA PICADO S.

Estimados participantes:

El Instituto Interamericano de Derechos Humanos se siente sumamente honrado con su presencia en este Seminario-Taller sobre Derechos Humanos y Medio Ambiente en América Latina.

Sabemos de la enorme capacidad profesional y preocupación que durante muchos años ustedes han mostrado por la defensa del medio ambiente y su regulación jurídica.

Sabemos que, desde las aulas universitarias, desde su trabajo en organismos no-gubernamentales, en organismos internacionales, asesorando grupos que luchan por la defensa de la ecologia y la naturaleza del planeta, ustedes han desarrollado una quijotesca lucha por *indagar, investigar, construir teoría y convencer* sobre la necesidad de preservar los recursos de la naturaleza y del ser humano.

El Instituto Interamericano de Derechos Humanos también persigue esos mismos objetivos de *indagar, investigar, construir teoría* y *convencer*. El Taller de Trabajo que pretendemos desarrollar estos días tendrá, en efecto, la intención de sistematizar las reflexiones que ustedes - desde las perspectivas de sus especialidades - han realizado en el área de los derechos humanos y del medio ambiente.

Existe, en este caso, una doble finalidad: diseñar un programa de educación sobre derechos humanos y derecho ambiental que, durante dos años, se aplicaría en seis paises latinoamericanos (México, Costa Rica, Brasil, Venezuela, Colombia y Chile).

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Esta labor de *educación* es, a nuestro juicio, fundamental. El IIDH está convencido que no sólo es importante crear leyes e instancias regulatorias. También es importante educar a los políticos, a los funcionarios, a los hombres y a las mujeres de la sociedad civil, a los niños y a las niñas de las escuelas y los colegios. Sólo a partir de un convencimiento colectivo de la necesidad de defender nuestro eco-sistema y de promulgar leyes y crear instituciones de defensa, sólo a partir de ello será posible crear una nueva cultura de relación del hombre con su mundo.

Como Directora Ejecutiva del Instituto Interamericano de Derechos Humanos, quiero agradecerles toda su ayuda y compromiso en esta noble tarea.

San José de Costa Rica, 20 de febrero de 1992.

The United Nations Environment Programme, International Environmental Law and the International Law of Human Rights:

MESSAGE TO THE INTER-AMERICAN SEMINAR ON HUMAN RIGHTS AND THE ENVIRONMENT

MOSTAFA K. TOLBA

There are now more than 150 multilateral treaties and other legal agreements in the field of the environment. Of these almost 100 have been entered into in the two decades since the Stockholm Conference on the Human Environment in 1972. Rarely, if ever, has a field of law expanded so rapidly, both in terms of the number of instruments in force, and in terms of the scope of their coverage.

Three months from now, in Rio de Janeiro, the nations of the world will come together again to chart a course for international environmental policy in the new century. Central to the debate at Rio will be the question of the future of international environmental law. Will it continue to expand its coverage? Will certain areas of international environmental concern remain beyond the ambit of the law?

In at least one critical sense international environmental law is similar to the international law of human rights. Both areas move beyond the purely contractual - or reciprocal - tradition of international law, and attempt to lay down peremptory norms of international behaviour. Both international human rights law and international environmental law are instrumental in the erosion of domestic jurisdiction. Under their ambit domestic actions become international concerns.

To a greater or lesser degree this is true of all international environmental law, and it is particularly true of agreements which seek to limit trade or other forms of association with non-Parties, such as the Convention on the International Trade in Endangered Species of Fauna and Flora (CITES), and the Montreal Protocol on Substances that Deplete the Ozone Layer.

It is the opinion of the United Nations Environment Programme, however, that the sovereign state is, and will continue to be, the basic unit of international relations for the foreseeable future. And although a growing number of issues - environment and human rights foremost among them - will challenge traditional notions of sovereignty, it is within that framework that international environmental law must develop. Ideally the delegates at Rio will reaffirm the wisdom embodied in Principle 21 of the Stockholm declaration, and will call for the progressive development of international environmental law within the framework of national sovereignty.

It is my belief that the law can find room both for the sovereignty of nations and for the sovereignty of nature.

Nairobi, 20 February 1992.

Los Sistemas de Protección de los Derechos Humanos y la Educación en Derechos Humanos y Medio Ambiente:

UN COMUNICADO AL SEMINARIO INTERAMERICANO SOBRE DERECHOS HUMANOS Y MEDIO AMBIENTE

GONZALO ELIZONDO BREEDY

Para el Departamento de Educación del Instituto Interamericano de Derechos Humanos este Seminario representa la principal actividad académica del año en curso.

Sin duda hoy todos podemos estar de acuerdo en que los Derechos Humanos han ganado la batalla de su propia promoción en nuestra América. La principal pregunta actual es acerca de la ruta que debe seguirse una vez alcanzado el consenso sobre la imperiosa necesidad de obtener su plena validez.

Diremos, en primer término, que por lo menos existen tres grandes vertientes para el futuro del movimento por los Derechos Humanos en América Latina:

1. El discurso general acerca de los propios Derechos Humanos debe obtener un desarrollo más sistemático en cada una de sus áreas. Debe producirse una nueva conceptualización que tenga la virtud de ofrecer una teoría completa sobre los fenómenos jurídicos universales, y, al mismo tiempo, un alto grado de intersubjetividad en las áreas específicas de ese gran mapa.

2. Como la doctrina de Derechos Humanos tiene una masa de beneficiarios, entonces, una vez promovidos aquellos Derechos, también debe pensarse en extender el conocimiento de su aplicación práctica para el mayor número de ciudadanos. Podemos decir que, a diferencia de la década pasada, hoy la población - en general - reconoce la necesidad social de los valores que fundamentan la doctrina, pero también es cierto que no basta el mero reconocimiento para lograr la vigencia de los mismos. Es necesario educar para la práctica y el ejercicio de las acciones contra la violación de derechos fundamentales.

3. Si lo anterior sólo podría lograrse con la educación, también es cierto que ésta no tendría sentido si los mecanismos de protección no resultan funcionales. Por tal motivo el tercer gran desafío es el de mejorar los actuales sistemas de protección, tanto en el derecho interno como en el ámbito internacional. De nada servirá la educación si los instrumentos jurídicos tienen una existencia meramente retórica, pues sería como instruir para algo inútil.

Sin duda este Seminario habrá de hacer aportaciones en cada uno de los campos precitados. No obstante, para que los efectos de la actividad académica no se agoten en ella misma consideramos essencial que exista un seguimiento a través de programas que garantizarían la continuidad de las iniciativas.

Estos programas tendrán que tener un gran énfasis educativo pues resulta urgente crear una amplia concientización de los grandes riesgos en que se está incurriendo al mantener en un bajo perfil la atención de los problemas sobre el Medio Ambiente. Pero tendrán que tener también una inmejorable base teórica pues se está incursionando en una esfera jurídica completamente nueva.

La calidad del grupo de expertos que componen el Seminario sin duda resulta una fortaleza que nos llena de seguridad, tanto en el sentido de una definición de contenidos substanciales para el março del programa, como en su responsabilidad y compromiso para ilustrar la tarea educativa.

Sin duda el Dr. Antônio Augusto Cançado Trindade, Director Académico del Seminario, y Director del Programa sobre Derechos Humanos y Medio Ambiente del Instituto Interamericano de Derechos Humanos, ha planteado un sólido punto de partida para asegurar que el programa a su cargo mantenga el vivo interés que siempre ha ganado entre nuestras contrapartes y dentro del propio Instituto. Extiendo a todos los participantes en el Seminario mis mejores deseos de éxito.

San José de Costa Rica, 02 de marzo de 1992.

The Draft Covenant on Environmental Conservation and Sustainable Use of Natural Resources(*)

WOLFGANG E. BURHENNE

In the past few years, several fora, including the U.N. World Commission on Environment and Development, pointed out the need for a global environmental legal instrument.

Indeed, the existence of a pool of environmental principles, which are accepted at different levels, leads to the belief that a global instrument which would represent the fundamentals of international environmental law could be prepared.

The Commission on Environmental Law of IUCN - The World Conservation Union, mandated by the IUCN General Assembly, - has embarked on the task to prepare a blue print for such a document, and chose to call its draft, "Covenant on Environmental Conservation and Sustainable Use of Natural Resources".

The rationale for the development of each element of the draft Covenant is the existence of principles in sectoral, regional or global instruments of a binding or nonbinding character. Thus the draft Covenant builds upon existing international law, as well as soft law.

Part II of the draft Covenant contains three articles considered Fundamental Principles. The first of these articles, entitled Individual Rights and Duties, reads at present as follows:

> "1. All persons have the fundamental right to an environment adequate for their dignity, health and well being.
>
> 2. All persons have a duty to protect and conserve the environment for the benefit of present and future generations.

(*) Document forwarded to the Inter-American Seminar on Human Rights and the Environment.

3. In discharging their obligations under this Article, States shall take practicable measures, by legislation or otherwise, as are necessary".

The two other fundamental principles which follow concern the obligation of States to protect the environment, and to co-operate with other States and international organisations.

Draft Covenant

The Covenant thus gives a prominent place to the rights of individuals in relation to environmental conservation, while also enunciating a corresponding duty on their part.

To which category of rights such a principle belongs, is a matter which can be discussed, and has been discussed by various scholarly fora in the past.

Whatever opinion one may have on this subject, it is clear from recent international and national law developments that the trend with regard to environmental conservation is towards the recognition of a fundamental right of all persons, matched by a fundamental obligation towards present and future generations on the part of States.

It is hoped that the inclusion of these principles in the draft Covenant will contribute to their being further discussed and refined, as well as acknowledged and accepted.

Bonn, 05 March 1992.

O Alto-Comissariado das Nações Unidas para os Refugiados e o Meio Ambiente:

MENSAGEM AO SEMINÁRIO INTERAMERICANO SOBRE DIREITOS HUMANOS E MEIO AMBIENTE

JAIME RUIZ DE SANTIAGO

Constitui uma grande satisfação para o ACNUR a realização deste Seminário dedicado ao estudo dos "Direitos Humanos e Meio Ambiente".

Com efeito, somente em época muito recente começou a ser ressaltada a importância que existe entre ambas realidades, o que provoca uma série de ações tendentes a assegurar e melhorar o meio-ambiente a fim de assegurar ao ser humano o exercício de seus direitos fundamentais. Nesse panorama se destaca o caso dos refugiados.

O Alto-Comissariado das Nações Unidas para Refugiados (ACNUR) intervém em movimentos de refugiados que se relacionam com problemas de meio-ambiente por dois aspectos:

Primeiramente, no que diz respeito às causas que provocam o fenômeno do refúgio por três razões fundamentais:

- Em primeiro lugar, porque cada dia aumenta consideravelmente o número de pessoas que se vêem compelidas a fugir de seu país de origem devido a uma variedade complexa de razões, vinculadas ao crescimento da população, da pobreza, da fome e da degradação do meio-ambiente, tanto como a violação generalizada dos direitos humanos, as tensões sociais e étnicas e dos conflitos armados;

- Em segundo lugar, porque facilmente os fluxos em massa de refugiados podem provocar graves deteriorações ao meio-ambiente, sobretudo quando chegam a regiões ecologicamente frágeis;

- Em terceiro lugar, a degradação do meio-ambiente não somente pode contribuir ao aparecimento de conflitos armados, como também é sempre uma consequência inevitável dos mesmos.

Mas o tema é também essencial na realização da repatriação voluntária, que é considerada como a solução idônea para a problemática dos refugiados. Pelo exposto anteriormente, é frequente que, ao levar-se a cabo esta solução, os repatriados encontrem seu meio-ambiente original tão deteriorado, que se vejam impossibilitados de se reintegrarem novamente ao seu país de origem. Não é de se estranhar que a repatriação se realize a regiões que tenham sido assoladas por décadas de guerra que sempre provoca sérios impactos no meio-ambiente.

Por tudo isso, o ACNUR manifesta uma séria preocupação no que se refere à proteção e assistência aos refugiados e particularmente aos repatriados. Nesse sentido, o ACNUR procura, cada vez mais, que a assistência outorgada aos refugiados não venha a ter consequências negativas no meio-ambiente do país que os acolhe, o que é particularmente importante no caso dos acampamentos.

Em seu trabalho, o ACNUR procura incorporar aos mesmos refugiados, para que eles mesmos se transformem em agentes que preservem e ajudem nas tarefas de reabilitação do meio-ambiente do país que os acolhe. Exemplo disso são os esforços de reflorestação nos quais intervêm os refugiados no Paquistão. O que também tem significado uma maior demanda de colaboração com instituições governamentais e com agências não-governamentais.

No que se refere ao caso dos repatriados, é interessante assinalar que atualmente cerca de 5.000 pessoas por dia estão podendo voltar livremente a seu país de origem. O ACNUR deve velar para que essa repatriação voluntária se realize em condições adequadas de segurança e dignidade. O que sucede no Afeganistão, São Salvador, Cambodia, Angola e África do Sul é um bom exemplo. Com a ajuda da comunidade internacional, o ACNUR deve colaborar para que os países possam re-integrar a seus nacionais e deste modo para que os retornados não se deparem com novas situações de emergência. Os programas que no momento se efetivam, por exemplo, na Nicarágua e em São Salvador constituem magnífico exemplo do que se pretende.

Essas são algumas considerações que hão de ser levadas em conta ao se analisar o tema das relações entre refugiados e meio-ambiente, e que hão de sustentar o interesse e a dedicação dos pesquisadores e de todas as pessoas e instituições que de alguma maneira participam nas mesmas.

Genebra, 28 de fevereiro de 1992.

The Right to Life and Environmental Protection: Preliminary Reflections(*)

JOHANNES VAN AGGELEN

I. Diversity and compatibility of concepts

1. Although the right to life within the framework of contemporary human rights law is rightly considered a non-derogable right and a norm of *jus cogens*(1), it is a much more contested issue when the right to life is linked to the emerging human right to environment, c.q. environmental protection.

2. In a statement to the Commission on Human Rights in 1991, the American delegation conceived a right to environmental quality "as a purely political gesture, further diluting or degrading the very concept of rights". A similar very sceptical attitude towards environmental issues within the framework of human rights law was taken in February 1992 when the Commission discussed the various studies currently undertaken by the Sub-Commission. Professor Shelton in this connection

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(*) Communication to the Inter-American Seminar on Human Rights and the Environment:

Geneva, 18 February 1992.

Urgent Fax Message to
Professor A.A. Cançado Trindade:

In fact, I am sending you hereby my contribution in writing to the Seminar to be held in Brasilia. (...) As a scholar I recognize the importance of your Seminar, both in terms of law and the environment as well as in terms of education and the environment.

Johannes van Aggelen
United Nations Office at Geneva.

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(1) See e.g. B.G. Ramcharan (editor): "The right to life in international law", 1985, and Johannes van Aggelen: "Le rôle des organisations internationales dans la protection du droit à la vie", (1986).

questioned "whether the goals and bases of environmental protection and human rights are the same or at least compatible"[2].

3. Even UNEP cautioned, within the framework of the study on human rights and the environment undertaken by Mrs. Ksentini, member of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, to select issues as neutral as possible in order to avoid "politically loaded topics", but did mention "the right to healthy physical environment".

4. Despite the fact that *de lege lata*, the gap between the right to life as integrated in an emerging human right to environment and the concept of environmental protection is still considered wide, attemps are being made to narrow it, not in the least after harrowing experiences, such as the Bhopal and Chernobyl disasters. In other words, the right to environmental protection is still related to environmental rights, rather than human rights.

5. Many environmentalists in fact argue that true guarantees of environmental protection will only come when society extends rights to the environment to guarantee it equal status with other rights-bearing entities.[3]

6. The Vatican, in its reply to Mrs. Ksentini, stated that the right to life and human dignity are "at the heart of the ecological question".

7. In a submission to UNCED, I have defended that at least at the regional level a general right to environmental protection has been recognized. Art. 24, of the African Charter on Human Rights and Peoples' Rights, adopted in Banjul, Gambia on 20 June 1981, states:

> "All peoples shall have the right to a general satisfactory environment favourable to their development".[4]

In addition, the Additional Protocol to the American Convention on Human Rights, in article 11, para. 2 provides:

> "The States Parties shall promote the protection, preservation and improvement of the environment".[5]

8. Moreover, the Declaration of Fundamental Rights and Freedoms adopted by the European Parliament in April 1989 confirms a fundamental right to environmental protection in the form of an obligation on the Community Institutions to take all necessary measures to assure the preservation, protection and improvement of the quality of the environment.

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(2) D. Shelton: "The right to environment" in "The Future of Human Rights Protection in a Changing World, Essays in honour of Torkel Opsahl", 1991, p. 206.

(3) C. Giagnocavo, H. Goldstein: "Law Reform or World Reform: The Protection of Environmental Rights", McGill Law Journal, Vol. 35, 1990, p. 346.

(4) Doc. CAB/LEG/67/3/Rev. 5, I.L.M. Vol. 21 (1982), p. 58.

(5) Protocol of San Salvador, 18 November 1988, O.A.S.T.S. Nr. 69; I.L.M. Vol. 28, 1989, p. 698.

9. It is noteworthy that the introductory document prepared by the Italian Government for the Siena Forum on International Law of the Environment in April 1990 reflected in para. 231:

> "Compared to the Stockholm Declaration, environmental protection today forms the content of the law itself, and not the context within which the right to liberty, equality and conditions adequate for life is achieved".

II. Evolution of the right to life within the framework of human rights law

10. The human right to life was initially conceived as a protection against physical abuse. The "travaux préparatoires", art. 3 of the Universal Declaration, art. 6 of the International Covenant on Civil and Political Rights, art. 1 of the American Declaration on the Rights and Duties of Man (1948) and art. 4 of the American Convention (1969) all bear implicit or explicit witness of this phenomenon. It coincides with the original emphasis on civil and political rights within the development of human rights law.

11. The Human Rights Committee, in its first general comment on article 6, CCPR adopted in July 1982, observed that the right to life should not be interpreted narrowly, but nevertheless gave primarily examples of physical abuses: acts of genocide and other acts of mass violence causing arbitrary loss of life. The Committee considered that States parties should take measures not only to prevent and punish deprivation of life by criminal acts, but also to prevent arbitrary killings by security forces.(6)

12. After the General Assembly adopted resolution 32/130 by which it for the first time declared that all human rights, whether civil, political, economic, social or cultural were indivisible, the development of human rights law takes another dimension. Concepts as solidarity rights or third generation rights emerge in the late seventies, but according to many scholars, they do no more than obfuscate the concept of human rights.(7)

13. Although the main characteristic of "solidarity rights" may be that they require implementation by all parts of society, Prof. Shelton correctly affirmed that it is in reality no distinguished feature, and that the protection of the right to life imposes no lesser duty upon governments than on individuals.(8)

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(6) See General comment 6 [16] contained in document CCPR/C/21/Rev. 1, dated 19 May 1989.

(7) See P. Alston: "A Third Generation of Solidarity Rights: Progressive Development or Obfuscation of International Human Rights Law?", Netherlands International Law Rev., Vol. 29, 1982, p. 307; *ibidem*: "Conjuring Up New Human Rights: A Proposal for Quality Control", A.J.I.L, Vol. 78, 1984, p. 607.

(8) Shelton: "The Right to Environment", *loc. cit.*, p. 201.

14. In my book, based on research done at the Research Centre of the Hague Academy of International Law in 1983, I have indeed projected that this rubric of human rights becomes ever more controversial because of its open-ended quality, with the result that even newer rights and guarantees are being discussed.[9] The *jus cogens* nature of the right to life could be weakened, if the right incorporates too many aspects that have traditionally been classified as economic and social guarantees. I admit, however, that the world community nowadays has a legal duty to safeguard the continued existence of mankind. Prof. Gormley called it a reverse obligation *erga omnes*.[10]

15. Within this wider perspective one could fit in the second general comment on the right to life adopted by the Human Rights Committee in November 1984 dealing with the designing, testing, manufacture, possession and deployment of nuclear weapons.[11] In addition, two reports prepared by the United Nations Secretary-General on "Respect for the Right to Life: Elimination of Chemical Weapons" and submitted to the Sub-Commission[12], where it is affirmed that it endangers basic human rights, such as the right to life, and the right to live in a sound and healthy environment, are relevant in this respect.

III. The emerging human right to environmental protection

16. The controversiality of the concept necessarily leads to the current lack of a precise definition or qualification. Several attempts have been made, but none seems ultimately satisfactory. These attempts include constitutional guarantees and guarantees contained in declarations and other human rights instruments, but without the proper judicial remedies. The abortive attempt in 1973 to elaborate an additional protocol to the European Convention on Human Rights which considered the protection of the life of individuals an integral part of the original goals of human rights and declaring that the protection of life essentially requires the existence of a natural environment favourable to human health, is clear evidence in this regard. The so-called "Steiger Protocol" was finally not adopted, i.a. for lack of a clear definition. Neither did it consider indirect threats to life.[13]

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(9) See review of my book by Prof. Dr. W.P. Gormley in Dalhousie Law Journal, Vol. 13, 1990, p. 850.

(10) W. Paul Gormley: "The Legal Obligation of the International Community to Guarantee a Pure and Decent Environment: The Expansion of Human Rights Norms", Georgetown International Environmental Law Review, Vol. III, Issue 1, Summer 1990, *loc. cit.*, p. 105.

(11) General Comment 14 (23) in doc. CCPR/C/21/Rev. 1/ p. 16.

(12) Doc. E/CN.4/Sub.2/1989/4; E/CN.4/Sub.2/1990/37; see also Sub-Commission resolution 1989/12 on "Movement and dumping of toxic and dangerous products and wastes".

(13) Report of the Working Group for Environmental Law, Bonn, 1973.

17. This proposal was certainly inspired by the Stockholm Declaration of 1972, in particular Principle 1 declaring that "man has the fundamental right to freedom, equality and adequate conditions of life in an environment of a quality that permits a life of dignity and well-being". Similar phraseology was used in Principle 1 of the Legal Principles adopted by the Expert Group on Environmental Law of the World Commission on Environment and Development (1986) and in an NGO Draft Charter on Environmental Rights and Obligations of Individuals, Groups and Organizations, dated February 1990, and which was submitted to the Bergen Conference on Sustainable Development in the ECE Region.

18. Whether the qualifying adjective is generally satisfactory (art. 24, African Charter), decent, violable, healthy, clean or whether the entitlement is to the highest attainable standard of physical health(14) at this juncture, these objectives impede rather than facilitate a legal remedy. Mrs. Ksentini in her preliminary report on Human Rights and the Environment also begs the question.(15) In this connection, reference should be made to an Earth care petition presented to Mr. Maurice Strong in 1975, then Executive Director of UNEP in the presence of the then Director of the Human Rights Division, Mr. Marc Schreiber. The petition alleges that the failure of governments to act, individually and collectively, to protect the environment has resulted in gross violation of human rights. Upon receiving the petition, Mr. Strong stated that those who by their acts, endanger the environment are commiting an act of aggression "against the right to life itself". A proposal to use the so-called "1503 peocedure" as legal remedy, for this purpose, was however never followed up.(16)

19. Despite the fact that the Global Consultation on the Right to Development as a Human Right, held in Geneva in January 1990, considered the right to life and to security in a healthy and durable environment, one of the basic principles of human rights(17), effective legal remedy against violation of the right to life within the context of environmental protection will remain the exception rather than the rule.

20. In order to improve this situation, a number of important issues should be clarified. First, there is the dichotomy between individual and collective rights. The right to life surely is an individual human right, while the human right to a whatever qualified environment is often conceived as a collective right. Mrs. Ksentini, in her

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(14) Art. 12 of the International Covenant on Economic, Social and Cultural Rights; see also European Charter on Environment and Health, adopted in Frankfurt in December 1989, art. 1. See further M. Bother: "La relation entre le droit international de la santé et le droit international de l'environnement", Revue Quebecoise du droit international, Vol II, 1985, p. 125.

(15) E/CN. 4/Sub. 2/1991/8, para. 69.

(16) Gregory Ho: "UN Recognition of the Human Right to Environmental Protection", Earth Law Journal, Vol. 2, 1976, pp. 225-254.

(17) The Realization of the Right to Development, Global Consultation on the Right to Development as a Human Right (HR/PUB/91/2, para. 40).

preliminary conclusions, squarely affirms that the right to the environment cannot be reduced to the right of the individual to claim an environment of quality and she continues by stating that the right is a solidarity right, involving duties and responsibilities at the national and international levels.[18]

21. The merger of the two concepts, however, diminishes the chances to be granted *locus standi* under an individual human rights complaint procedure. The jurisprudence is therefore almost not yet existent. During its fifteen years of existence, the Human Rights Committee has considered only one communication directly related to the right to life and the environment. In 1980 the Port Hope Environmental in Ontario, Canada, on behalf of 129 citizens, submitted a communication alleging that storage of radioctive waste near residential areas was a threat to the life of present and future generations of Port Hope considering that excessive exposure to radioactivity is known to cause cancer and genetic defects. Although the Committee observed that the communication raised serious issues, with regard to the obligation of States to protect human life, the communication was considered inadmissible for lack of exhaustion of domestic remedies. It is noteworthy that the Committee did not pronounce itself on acting of future generations, but considered it as an expression of concern "purporting to put into due perspective the importance of the matter.[19]

22. The Economic, Social and Cultural Rights Committee established pursuant to ECOSOC resolution 1985/17 has not yet dealt with the question. Moreover, the Covenant has no individual complaint procedures and therefore it is argued that a Protocol should be drafted in the future.

23. Prospects do not seem to be brighter under the Inter-American System. The San Salvador Protocol simply does not grant the right of individual petition for violation of Article 11, the right to environment. Protocol article 19, para. 6 only allows submission of complaints for alleged violation of the right to freedom of trade unions and the right to education.

24. Therefore, when the Inter-American Commission on Human Rights in December 1980 was confronted with a petition on behalf of the Yanomani Indians of Brazil, emphasis was placed on violation of the right to life within the context of environmental protection, rather than claiming an individual or collective human right to environment.[20]

25. Allegation of violation of the right to life came up also in a petition submitted to the Inter-American Commission on Human Rights by the "Confederación de Nacionalidades Indigenas de la Amazonia Ecuatoriana" on

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(18) E/CN. 4/Sub. 2/1991/8, para. 102.

(19) Communication No. 67/1980 declared inadmissible on 27 October 1982, Selected Decisions of the Human Rights Committee under the Optional Protocol, Vol. 2, 1990, p. 20.

(20) Case No. 7615 dated 5 March 1985 contained in the Annual Report of the Inter-American Commission on Human Rights 1984-1985, doc. OEA/SER.L/V/II. 66.

behalf of the Huaorani People in Ecuador. It was contended that governments have the obligation to take affirmative action to protect the right to life and security of person regarding indigenous people.(21)

26. It is indeed true that indigenous people as a vulnerable group need special protection. One author argued that the communities *are* their environment, profoundly integrated and deeply depedent on it for the realization of their right to life.(22) It should be clear that here the right to environmental protection is conceived as a collective right.

27. Growing concern for the rights of indigenous peoples has stimulated the Sub-Commission to start drafting a declaration on the rights of indigenous people. In a revised working paper submitted by the Chairman/Rapporteur in 1991, indigenous people are entitled to a right of non-interference in their eco-system which in fact means a collective right to environmental protection.(23) Similar protection is given in ILO Convention No. 169, articles 13-15, adopted on 27 June 1989.(24)

28. Children are another vulnerable group where the right to life and environmental protection are intertwined. The children of today are the generation of tomorrow, and as Professor Brown Weiss puts it we should be fair to future generations.(25) The General Assembly adopted the Convention on the Rights of the Child on 20 November 1989, which imposes in art. 24 (c) an obligation on States Parties to protect them from environmental degradation.(26) However, prospects for an effective remedy under article 44 of the Convention seem dim as the Committee may only address relevant issues indirectly, through the consideration of States reports. UNEP also called special attention to the vulnerable position of children in relation to the environment.(27)

29. A second problem to be solved before an effective legal remedy may be obtained is, in my view, the question whether the right to life remains an original right or gradually becomes a derivative right within the context of environmental

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(21) Submission made available to the Special Rapporteur, Mrs. Ksentini, by the Sierra Club Legal Defence Fund, dated 25 June 1990.

(22) William Andrew Shutkin: "International Human Rights Law and the Earth: The Protection of Indigenous Peoples and the Environment", Virginia Journal of International Law, Vol. 31, 1991, p. 479, *loc. cit.*, p. 480. See also R. Kapasehit and M. Klippenstein: "Aboriginal Group Rights and Environmental Protection", McGill Law Journal, Vol. 36, 1991, p. 925.

(23) Doc. E/CN.4/Sub. 2/ 1991/36, pp. 80-81.

(24) International Labour Conference, Convention No. 169, Convention Concerning Indigenous and Tribal Peoples in Independent Countries.

(25) E. Brown Weiss: "In Fairness to Future Generations: International Law, Common Patrimony and Intergenerational Equity", 1989. See also her intervention: "Our Rights and Obligations to Future Generations for the Environment", A.J.I.L., Vol. 84 (1990), pp. 190-207.

(26) General Assembly resolution 44/25, Annex, of 20 November 1989.

(27) "Children and the Environment", Report of the Executive Director, March 1990.

rights. If so, it will also lose at some point its *jus cogens* character, because the question becomes: "Is the human right to life dependent upon or a prerequisite for the human right to environment"?

30. A last question to be addressed in this connection is whether the concepts here discussed would benefit from the UNCED process. Having attended most of the sessions of Working Group III on Legal and Institutional Matters, I have become pessimistic. Substantive discussion on draft Principle 3 on individual and group rights of the proposed Earth Charter to be adopted in Rio de Janeiro, has still to come off the ground and the written submissions, although generous, do lack general consensus. It may be of interest to refer to the Australian proposal: "The right to life, food and shelter and a healthy environment".(28)

IV. Concluding remarks

31. It is obvious that the relation between the right to life and environmental protection gained importance again in the wake of the deliberate burning of the Kuwait oil fields by Saddam Hussein in 1991. Art. 35, para. 3 of Protocol I Additional to the four 1949 Conventions on the Laws of War prohibits "to employ methods or means of warfare which are intended, or may be expected to cause widespread, long-term and severe damage to the national environment". A similar provision protects the natural environment in Article 55.(29)

32. Other human rights, which are very often used in the doctrine to underscore the necessity for a right to environment, include the right to self-determination, to information, participation and education.(30) If we consider the new concept of environmental refugees, we can add "the freedom of movement" to the list.

33. It is my submission that these issues relate to environmental promotion rather than environmental protection. Regarding the right to life and environmental protection, it is more the concept of environmental security that should guide future

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(28) See doc. A/Conf. 151./PC/WG.III/L.8. Rev. 1, para. 13.

(29) See *i.a.*, Christopher York: "International Law and the Collateral Effects of War on the Environment: The Persian Gulf", South African Journal on Human Rights, Vol. 7, Part. 3, 1991, p. 269. See also: Major B. Schafer: "The Relationship between the International Law of Armed Conflict and Environmental Protection: The Need to Re-evaluate What Types of Conduct are Permissible during Hostilities", Cal. Western International Law Journal, Vol. 19, 1989, p. 287.

(30) See *inter alia*, M. Thorme: "Establishing Environment as a Human Right", Denver Journal of International Law and Policy, Vol. 19 (2) 1, 1991, p. 301. N. Gibson: "The Right to a Clean Environment", Saskatchewan Law Review, Vol. 54, No. 1, Winter 1990, pp. 5-17. This approach is also taken by Mrs. Ksentini in her study. See for a procedural approach to the human right to environment, W. Paul Gormely: "The Right to a Safe and Decent Environment", Indian Journal of International Law, Vol. 28, No. 1, 1988, pp. 1-32.

generations.[31] The core of the problems remains, however, the precise definition of concepts. If we don't succeed then we may never be able to make soft law 'hard' and succeed in domestic or international litigation.[32]

(31) See G. Handl, "Environmental Security and Global Change: The Challenge to International Law", Yearbook on Environmental Law, Vol. 1, 1990, pp. 3-33.

(32) P.M. Dupuy: "Soft Law and the International Law of the Environment", Michigan Journal of International Law, Vol. 12, Winter 1991, pp. 420-435.

PARTE / PART VI

CONCLUSIONES / CONCLUSIONS

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Two Major Challenges of Our Time: Human Rights and the Environment

ALEXANDRE KISS and ANTÔNIO A. CANÇADO TRINDADE

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

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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 hights 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 pooper 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 strengthned 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 pratices cannot be confined within national boders. 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.

Conclusiones del Seminario Interamericano sobre Derechos Humanos y Medio Ambiente (Brasília, 1992)

Los participantes en el Seminario Interamericano sobre Derechos Humanos y Medio Ambiente (Brasília, 4-7 de marzo de 1992), provenientes de varias regiones del mundo, después de mantener intercambios de puntos de vista sobre aspectos nacionales e internacionales de la relación entre los derechos humanos y el medio ambiente, llegaron a las siguientes conclusiones:

I. Existe una relación íntima entre desarrollo y medio ambiente, desarrollo y derechos humanos, y medio ambiente y derechos humanos. Posibles vínculos se pueden encontrar, v.g., en los derechos a la vida y a la salud en su amplia dimensión, que requieren medidas negativas así como positivas por parte de los Estados. En realidad, la mayoría de los derechos económicos, sociales y culturales y los derechos civiles y políticos más básicos demuestran esta relación íntima. Al final, hay un paralelo entre las evoluciones de la protección de los derechos humanos y de la protección del medio ambiente, habiendo ambas pasado por un proceso de internacionalización y de globalización.

II. El concepto de desarrollo sustentable, que puede ser considerado como expresión de tales vínculos, lleva al reconocimiento del derecho de las generaciones futuras a un medio ambiente sano.

III. El vínculo entre medio ambiente y derechos humanos está además claramente demostrado por el hecho de que la degradación ambiental puede agravar las violaciones de derechos humanos, y, a su vez, la violaciones de derechos humanos pueden igualmente llevar a la degradación ambiental o tornar más difícil la protección del medio ambiente. Tales situaciones resaltan la necesidad de fortalecer o desarrollar los derechos a la alimentación, al agua y a la salud. Además, se debe asegurar la observancia de las normas de derecho humanitario y su fortalecimiento. Es también necesario desarrollar aún más los principios jurídicos internacionales de responsabilidad por daño ambiental y de compensación.

IV. Se debe estudiar y promover aún más el reconocimiento y la implementación de los derechos de colectividades humanas, tales como los derechos de grupos vulnerables (poblaciones indígenas, niños, minusválidos y

ancianos). La contribución de la mujer a la protección del medio ambiente debe ser fortalecida, incluso asegurando la implementación de sus derechos.

V. El proceso democrático es esencial para asegurar el desarrollo sustentable, en particular porque garantiza la participación pública y promueve el acceso a la información relativa al medio ambiente. Los ejemplos de diferentes países latinoamericanos demuestran que los problemas varían pero que las distintas estrategias nacionales de protección ambiental deben basarse en el respeto de los derechos humanos y la búsqueda del desarrollo sustentable.

Brasília, 7 de marzo de 1992.

Comité de Redacción:
Profesora *Edith BROWN WEISS*
Profesor *Antônio A. CANÇADO TRINDADE*, Presidente
Profesor *Günther HANDL*
Profesor *Alexandre KISS*
Profesor *Stephen McCAFFREY*
Profesora *Dinah SHELTON*

Conclusions of the Inter-American Seminar on Human Rights and the Environment (Brasília, 1992)

The participants of the Inter-American Seminar on Human Rights and the Environment (Brasília, 4-7 March 1992), coming from various regions of the world, after holding exchanges of views on national and international aspects of the relationship between human rights and the environment, have reached the following conclusions:

I. There is a close relationship between development and environment, development and human rights, and environment and human rights. Possible linkages can be found, e.g., in the rights to life and to health in their wide dimension, which require negative as well as positive measures on the part of States. In fact, this close relationship is demonstrated by most economic, social and cultural rights and by the most basic civil and political rights. After all, there is a parallel between the evolutions of human rights protection and environmental protection, having both undergone a process of internationalization and globalization.

II. The concept of sustainable development, which can be considered as an expression of such linkages, leads to the recognition of the right of future generations to a healthy environment.

III. The link between environment and human rights is further clearly demonstrated by the fact that environmental degradation can aggravate human rights violations, and, in turn, human rights violations can likewise lead to environmental degradation or make it more difficult to protect the environment. Such situations highlight the need to strengthen or develop rights to food, water and health. Moreover, compliance with humanitarian law norms and their strengthening ought to be better ensured. There is also a need to further develop international legal principles of liability for environmental damage and of compensation.

IV. The recognition and implementation of rights of human collectivities ought to be further studied and promoted, such as the rights of vulnerable groups (indigenous populations, children, the handicapped and the elderly). The

contribution of women to protecting the environment ought to be strengthened, including by ensuring the implementation of their rights.

V. The democratic process is essential to secure sustainable development, in particular because it ensures public participation and promotes access to information concerning the environment. The examples of distinct Latin American countries show that problems vary but that distinct national strategies for environmental protection ought to be based on respect for human rights and pursuance os sustainable development.

Brasília, 7 March 1992.

Drafting Committee:
Professor *Edith BROWN WEISS*
Professor *Antônio A. CANÇADO TRINDADE,* Chairman
Professor *Günther HANDL*
Professor *Alexandre KISS*
Professor *Stephen McCAFFREY*
Professor *Dinah SHELTON.*

Recommendations to the IIDH of the Inter-American Seminar on Human Rights and the Environment (Brasília, 1992) - Bases for a Program on Education in Human Rights and the Environment

1. The participants of the Inter-American Seminar on Human Rights and the Environment (Brasília, 4-7 March 1992), after four days of consideration of the theme "Human Rights and the Environment" and of discussions, in plenary sessions and in five working groups, on its conceptual and operational frameworks, have adopted the recommendations that follow. The IIDH can build upon the contribution of the following recommendations to establish and develop a Program on Education in Human Rights and the Environment and to draft the corresponding request for funding to the Inter-American Development Bank (BID) and to other possible funding Institutions.

2. The IIDH draft project is a valuable proposal and embodies ideas which would provide a most appropriate follow-up to this Seminar. The two seggestions of, respectively, establishment of a program of teaching and training (*capacitación*) in human rights and the environment, and drafting of a legal document - a Charter - on the subject for the American continent should be separated for individual funding and operation to give them the attention they both deserve.

3. At the present stage, priority should be given to the program of teaching and training (*capacitación*). The IIDH should proceed to seek funding to develop that program on a regional, Latin-American basis. This Seminar has elaborated on the links between human rights, the environment and sustainable development. The program should further develop this theme in case-studies provided by six pilot countries (Brazil, Chile, Colombia, Costa Rica, Mexico, and Venezuela), and further consider its impact on present and future generations.

4. The target groups (*destinatarios*) to be addressed are distinct:

a) formal education: elementary, secondary and university level teachers and administrators; civil servants; members of local, regional and national legislative or

governing bodies; judges, lawyers and members of the *Ministerio Público*; businessmen;

b) non-formal education: NGO leaders and members, community leaders, members of particularly vulnerable groups (including indigenous populations and other minority groups), journalists and other members of the mass-media.

Among such target groups, priority should be given to those which will have a multiplying effect through teaching and further general dissemination of the materials taught.

5. The teaching materials are to be problem-oriented and multidisciplinary in approach. They are to pursue a holistic approach, and to draw attention to the links between human rights, the environment and sustainable development, as elaborated in this Seminar. They are to focus on the joint responsibility of public authorities, the private (industrial) sector and other entities of the civil society. Special attention is, however, to be given to legal and regulatory aspects of the relations between human rights and the environment, especially for the sessions for judges, lawyers and members of the *Ministerio Público*.

6. It should be kept in mind that the broader the range of groups addressed in a single teaching-and-training session the less precise the materials are to be in responding to the particular concerns or interests of each group. It should, thus, be further kept in mind that while such teaching-and-training sessions might reach a larger number of groups, they might on the other hand reach them less effectively if attention is not given to this point.

7. It will be convenient to start the program with a pilot group of three countries, with three more to follow preliminary evaluation of the program's success. It is recommended that, on the basis of the results of this Seminar, the IIDH undertakes to prepare, as a general instrument of teaching and training (*capacitación*) in the different projects developed in each of the six pilot countries, a Handbook titled "The Human Right to a Healthy Environment" ("El Derecho Humano a un Medio Ambiente Sano"); the volume of Proceedings of this Seminar can certainly provide a valuable guide to this undertaking.

8. A possible module for a weekly teaching-and-training session (of 38 hours) could be the following:

A) Lectures:

- General principles of human rights protection	4h
- General principles of environmental protection	4h
- Law and development in Latin America	4h
- Local (national) environmental law (Brazil/Chile/Colombia/ Costa Rica/Mexico/Venezuela)	6h
- Latin American cooperation in development and environment	2h

- Legal and political means of action for environmental protection (information, participation, means of redress)	2h
- Role of NGOs	2h
B) Case Studies: three case studies related to local environmental problems involving human rights	6h
C) Pedagogical methods and approaches (seminars)	6h
D) Synthesis, clonclusions and evaluation	2h
Total	38h

9. After accumulating some experience with this program, the IIDH could then turn in the future to the other suggested course of action, namely, the drafting of a legal instrument - an American Charter - on the subject. Such instrument should aim at a time at human rights protection, environmental protection and sustainable development. Here, again, the IIDH could proceed by stages, first with appointment of two consultants to prepare a discussion draft. Upon completion of the draft, a meeting of experts, including representatives of the OAS as well as of NGOs, could be convened to discuss the draft. Next, further "public or open hearings" could be held in the six pilot countries as part of the series of teaching-and-training sessions above suggested. The final version of the draft would then be completed.

10. Along with drafting such regional legal instrument, the IIDH could further consider promoting in the future technical assistance to countries in the region to help those in need in drafting environmental legislation based upon the observance of human rights and pursuance of sustainable development. The experience of UNEP's technical assistence program for developing countries could be recalled in this connection.

Brasília, 7 March 1992.

a) Professor *Antônio A. CANÇADO TRINDADE*
Rapporteur, Academic Director of the Seminar.

GRUPOS DE TRABAJO/WORKING GROUPS

Grupo/Group I

"Marco General del Programa de Capacitación/General Framework of Teaching-and-Training Program"
Dinah Shelton, Presidente/Chairperson
Antônio A. Cançado Trindade
Stephen McCaffrey
Edith Brown Weiss
Patricia Madrigal

Grupo/Group II

"Destinatarios y Materiales de Enseñanza/Target Groups and Teaching Materials"
Alexandre Kiss, Presidente/Chairman
Borje Sjoquist
Jaime Ordóñez
Washington Albino
Günther Handl
Lorena González
Elia McComie
Alberto Blanco
Ana Maria Cerda

Grupo/Group III

"ONGs/NGOs"

Borje Sjoquist, Presidente/Chairman
Jaime Ordóñez
Elia McComie
Lorena Gozález
Vicente Ramírez
Alberto Blanco
Ana Maria Cerda

Grupo/Group IV

"Enlace/Coordination"
Antônio A. Cançado Trindade, Presidente/Chairman
Alexandre Kiss
David Atkinson (BID)
Dinah Shelton
Jaime Ordóñez
Stephen McCaffrey
Edith Brown Weiss
Borje Sjoquist
Washington Albino
Elia McComie
Patricia Madrigal

COMITÉ DE REDACCIÓN/DRAFTING COMMITTEE

"Conclusiones/Conclusions"

Antônio A. Cançado Trindade, Presidente/Chairman
Alexandre Kiss
Stephen McCaffrey
Dinah Shelton
Edith Brown Weiss
Günther Handl

ANEXOS / ANNEXES

DECLARACIÓN DE ESTOCOLMO SOBRE EL MEDIO AMBIENTE HUMANO (1972)

La Conferencia de las Naciones Unidas sobre el Medio Ambiente Humano, reunida en Estocolmo del 5 al 16 de junio de 1972, y atenta a la necesidad de un criterio y unos principios comunes que ofrezcan a los pueblos del mundo inspiración y guía para preservar y mejorar el medio ambiente humano,

I

Proclama que:

1. El hombre es a la vez obra y artífice del medio ambiente que lo rodea, el cual le da el sustento material y le brinda la oportunidad de desarrollarse intelectual, moral social y espiritualmente. En la larga y tortuosa evolución de la raza humana en este planeta se ha llegado a una etapa en que, gracias a la rápida aceleración de la ciencia y la tecnología, el hombre ha adquirido el poder de transformar, de innumerables maneras y en una escala sin precedentes, cuanto lo rodea. Los dos aspectos del medio ambiente humano, el natural y el artificial, son esenciales para el bienestar del hombre y para el goce de los derechos humanos fundamentales, incluso el derecho a la vida misma.

2. La protección y mejoramiento del medio ambiente humano es una cuestión fundamental que afecta al bienestar de los pueblos y al desarrollo económico del mundo entero, un deseo urgente de los pueblos de todo el mundo y un deber de todos los gobiernos.

3. El hombre debe hacer constante recapitulación de su experiencia y continuar descubriendo, inventando, creando y progresando. Hoy en día, la capacidad del hombre de transformar lo que le rodea, utilizada con discernimiento, puede llevar a todos los pueblos los beneficios del desarrollo y ofrecerles la oportunidad de ennoblecer su existencia. Aplicado errónea o imprudentemente, el mismo poder puede causar daños incalculables al ser humano y a su medio ambiente. A nuestro alrededor vemos multiplicarse las pruebas del daño causado por el hombre en muchas regiones de la tierra, niveles peligrosos de contaminación del agua, del aire, de la tierra y de los seres vivos; grandes trastornos del equilibrio ecológico de la biosfera; destrucción y agotamiento de recursos insustituibles y graves deficiencias, nocivas para la salud física, mental y social del hombre, en el medio ambiente por él creado, especialmente en aquel en que vive y trabaja.

4. En los países en desarrollo, la mayoría de los problemas ambientales están motivados por el subdesarrollo. Millones de personas siguen viviendo muy por

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debajo de los niveles mínimos necesarios para una existencia humana decorosa, privadas de alimentación y vestido, de vivienda y educación, de sanidad e higiene adecuadas. Por ello, los países en desarrollo deben dirigir sus esfuerzos hacia el desarrollo, teniendo presente sus prioridades y la necesidad de salvaguardar y mejorar el medio ambiente. Con el mismo fin, los países industrializados deben esforzarse por reducir la distancia que los separa de los países en desarrollo. En los países industrializados, los problemas ambientales están generalmente relacionados con la industrialización y el desarrollo tecnológico.

5. El crecimiento natural de la población plantea continuamente problemas relativos a la preservación del medio ambiente, y se deben adoptar las normas y medidas apropiadas, según proceda, para hacer frente a esos problemas. De todas las cosas del mundo, los seres humanos son lo más valioso. Ellos son quienes promueven el progreso social, crean riqueza social, desarrollan la ciencia y la tecnología y, con su duro trabajo transforman continuamente el medio ambiente humano. Con el progreso social y los adelantos de la producción, la ciencia y la tecnología, la capacidad del hombre para mejorar el medio ambiente se acrece a cada día que pasa.

6. Hemos llegado a un momento de la historia en que debemos orientar nuestros actos en todo el mundo atendiendo con mayor solicitud a las consecuencias que puedan tener para el medio ambiente. Por ignorancia o indiferencia, podemos causar daños inmensos e irreparables al medio ambiente terráqueo del que dependen nuestra vida y nuestro bienestar. Por el contrario, con un conocimiento más profundo y una acción más prudente, podemos conseguir para nosotros y para nuestra posteridad unas condiciones de vida mejores en un medio ambiente más en consonancia con las necesidades y aspiraciones del hombre. Las perspectivas de elevar la calidad del medio ambiente y de crear una vida satisfactoria son grandes. Lo que se necesita es entusiasmo, pero, a la vez, serenidad de ánimo, trabajo afanoso, pero sistemático. Para llegar a la plenitud de su libertad dentro de la naturaleza, el hombre debe aplicar sus conocimientos a forjar, en armonía con ella, um medio ambiente mejor. La defensa y el mejoramiento del medio ambiente humano para las generaciones presentes y futuras se ha convertido en meta imperiosa de la humanidad, que ha de perseguirse al mismo tiempo que las metas fundamentales ya establecidas de la paz y el desarrollo económico y social en todo el mundo, y de conformidad con ellas.

7. Para llegar a esta meta será menester que ciudadanos y comunidades, empresas e instituciones, en todos los planos, acepten las responsabilidades que les incumben y que todos ellos participen equitativamente en la labor común. Hombres de toda condición y organizaciones de diferente índole plasmarán, con la aportación de sus propios valores y la suma de sus actividades, el medio ambiente del futuro. Corresponderá a las administraciones locales y nacionales, dentro de sus respectivas jurisdicciones, la mayor parte de la carga en cuanto al establecimiento de normas y la aplicación de medidas en gran escala sobre el medio ambiente.

También se requiere la cooperación internacional con objeto de allegar recursos que ayudem a los países en desarrollo a cumplir su cometido en esta esfera. Y hay un número cada vez mayor de problemas relativos al medio ambiente que, por ser de alcance regional o mundial o por repercutir en el ámbito internacional común, requerirán una amplia colaboración entre las naciones y la adopción de medidas para las organizaciones internacionales en interés de todos. La Conferencia encarece a los gobiernos y a los pueblos que aúnen esfuerzos para preservar y mejorar el medio ambiente humano en beneficio del hombre y de su posteridad.

II

PRINCIPIOS

Expresa la convicción común de que:

Principio I

El hombre tiene el derecho fundamental a la liberdad, la igualdad y el disfrute de condiciones de vida adecuadas en un medio ambiente de calidad tal que le permita llevar una vida digna y gozar de bienestar, y tiene la solemne obligación de proteger y mejorar el medio ambiente para las generaciones presentes y futuras. A este respecto, las políticas que promueven o perpetúan el *apartheid*, la segregación racial, la discriminación, la opresión colonial y otras formas de opresión y de dominación extranjera quedan condenadas y deben eliminarse.

Principio 2

Los recursos naturales de la tierra incluidos el aire, el agua, la tierra, la flora y la fauna y especialmente muestras representativas de los ecosistemas naturales, deben preservarse en benefício de las generaciones presentes y futuras, mediante una cuidadosa planificación u ordenación, según convenga.

Principio 3

Debe mantenerse y, siempre que sea posible, restaurarse o mejorarse la capacidad de la tierra para producir recursos vitales renovables.

Principio 4

El hombre tiene la responsabilidad especial de preservar y administrar juiciosamente el patrimonio de la flora y la fauna silvestres y su hábitat, que se encuentran actualmente en grave peligro por una combinación de factores adversos. En consecuencia, al planificar el desarrollo económico debe atribuirse importancia a la conservación de la naturaleza, incluidas la flora y la fauna silvestres.

Principio 5

Los recursos no renovables de la tierra deben emplearse de forma que se evite el peligro de su futuro agotamiento y se asegure que toda la humanidad comparte los beneficios de tal empleo.

Principio 6

Debe ponerse fin a la descarga de sustancias tóxicas o de otras materias a la liberación de calor, en cantidades o concentraciones tales que el medio ambiente no puede neutralizarlas, para que no se causen daños graves o irreparables a los ecosistemas. Debe apoyarse la justa lucha de los pueblos de todos los países contra la contaminación.

Principio 7

Los Estados deberán tomar todas las medidas posibles para impedir la contaminación de los mares por sustancias que puedan poner en peligro la salud del hombre, dañar los recursos vivos y la vida marina, menoscabar las posibilidades de esparcimiento o entorpecer otras utilizaciones legítimas del mar.

Principio 8

El desarrollo económico y social es indispensable para asegurar al hombre un ambiente de vida y de trabajo favorable y para crear en la tierra las condiciones necesarias de mejora de la calidad de vida.

Principio 9

Las deficiencias del medio ambiente originadas por las condiciones del subdesarrollo y los desastres naturales plantean graves problemas, y la mejor manera de subsanarlas es el desarrollo acelerado mediante la transferencia de cantidades considerables de asistencia financiera y tecnológica que complemente los esfuerzos internos de los países en desarrollo y la ayuda oportuna que pueda requerirse.

Principio 10

Para los países en desarrollo, la estabilidad de los precios y la obtención de ingresos adecuados de los productos básicos y las materias primas son elementos esenciales para la ordenación del medio ambiente, ya que han de tenerse en cuenta tanto los factores económicos como los procesos ecológicos.

Principio 11

Las políticas ambientales de todos los Estados deberían estar encaminadas a aumentar el potencial de crecimiento actual o futuro de los países en desarrollo y no

deberían coartar ese potencial ni obstaculizar el logro de mejores condiciones de vida para todos, y los Estados y las organizaciones internacionales deberían tomar las disposiciones pertinentes con miras a llegar a un acuerdo para hacer frente a las consecuencias económicas que pudieran resultar, en los planos nacional e internacional, de la aplicación de medidas ambientales.

Principio 12

Deberían destinarse recursos a la conservación y mejoramiento del medio ambiente teniendo en cuenta las circunstancias y las necesidades especiales de los países em desarrollo y cualesquiera gastos que pudieran originar a estos países la inclusión de medidas de conservación del medio ambiente en sus planes de desarrollo, así como la necesidad de prestarles, cuando lo soliciten, más asistencia técnica y financiera internacional con ese fin.

Principio 13

A fin de lograr una más racional ordenación de los recursos y mejorar así las condiciones ambientales, los Estados deberían adoptar un enfoque integrado y coordinado de la planificación de su desarrollo, de modo que quede asegurada la compatibilidad del desarrollo con la necesidad de proteger y mejorar el medio ambiente humano en beneficio de su población.

Principio 14

La planificación racional constituye un instrumento indispensable para conciliar las diferencias que puedan surgir entre las exigencias del desarrollo y la necesidad de proteger y mejorar el medio ambiente.

Principio 15

Debe aplicarse la planificación a los asentamientos humanos y a la urbanización con miras a evitar repercusiones perjudiciales sobre el medio ambiente y a obtener los máximos benefícios sociales, económicos y ambientales para todos. A este respecto deben abandonarse los proyectos destinados a la dominación colonialista y racista.

Principio 16

En las regiones en que exista el riesgo de que la tasa de crecimiento demográfico o las concentraciones excesivas de población perjudiquen al medio ambiente o al desarrollo, o en que la baja densidad de población pueda impedir el mejoramiento del medio ambiente humano y obstaculizar el desarrollo, deberían aplicarse políticas demográficas que respetasen los derechos humanos fundamentales y contasen con la aprobación de los gobiernos interesados.

Principio 17

Debe confiarse a las instituciones nacionales competentes la tarea de planificar, administrar o controlar la utilización de los recursos ambientales de los Estados con el fin de mejorar la calidad del medio ambiente.

Principio 18

Como parte de su contribución al desarrollo económico y social se debe utilizar la ciencia y la tecnología para descubrir, evitar y combatir los riesgos que amenazan al medio ambiente, para solucionar los problemas ambientales y para el bien común de la humanidad.

Principio 19

Es indispensable una labor de educación en cuestiones ambientales, dirigida tanto a las generaciones jóvenes como a los adultos y que preste la debida atención al sector de población menos privilegiado, para ensanchar las bases de una opinión pública bien informada, y de una conducta de los individuos, de las empresas y de las colectividades inspirada en el sentido de su responsabilidad en cuanto a la protección y mejoramiento del medio ambiente en toda su dimensión humana. Es también esencial que los medios de comunicación de masas eviten contribuir al deterioro del medio ambiente humano y difundan, por el contrario, información de carácter educativo sobre la necesidad de protegerlo y mejorarlo, a fin de que el hombre pueda desarrollarse en todos los aspectos.

Principio 20

Se deben fomentar en todos los países, especialmente en los países en desarrollo, la investigación y el desarrollo científicos referentes a los problemas ambientales, tanto nacionales como multinacionales. A este respecto, el libre intercambio de información científica actualizada y de experiencia sobre la transferencia debe ser objeto de apoyo y de asistencia, a fin de facilitar la solución de los problemas ambientales; las tecnologías ambientales deben ponerse a disposición de los países en desarrollo en unas condiciones que favorezcan su amplia difusión sin que constituyan una carga económica para esos países.

Principio 21

De conformidad con la Carta de las Naciones Unidas y con los principios del derecho internacional, los Estados tienen el derecho soberano de explotar sus propios recursos en aplicación de su propia política ambiental, y la obligación de asegurarse de que las actividades que se lleven a cabo dentro de su jurisdicción o

bajo su control no perjudiquen al medio ambiente de otros Estados o de zonas situadas fuera de toda jurisdicción nacional.

Principio 22

Los Estados deben cooperar para continuar desarrollando el derecho internacional en lo que se refiere a la responsabilidad y a la indemnización a las víctimas de la contaminación y otros daños ambientales que las actividades realizadas dentro de la jurisdicción o bajo el control de tales Estados causen a zonas situadas fuera de su jurisdicción.

Principio 23

Sin perjuicio de los criterios que puedan acordarse por la comunidad internacional y de las normas que deberán ser definidas a nivel nacional, en todos los casos será indispensable considerar los sistemas de valores prevalecientes en cada país y la aplicabilidad de unas normas que, si bien son válidas para los países más avanzados, pueden ser inadecuadas y de alto costo social para los países en desarrollo.

Principio 24

Todos los países, grandes o pequeños, deben ocuparse con espíritu de cooperación y en pie de igualdad de las cuestiones internacionales relativas a la protección y mejoramiento del medio ambiente. Es indispensable cooperar, mediante acuerdos multilaterales o bilaterales o por otros medios apropiados, para controlar, evitar, reducir y eliminar eficazmente los efectos perjudiciales que las actividades que se realicen en cualquier esfera puedan tener para el medio ambiente, teniendo en cuenta debidamente la soberanía y los intereses de todos los Estados.

Principio 25

Los Estados se asegurarán de que las organizaciones internacionales realicen una labor coordinada, eficaz y dinámica en la conservación y mejoramiento del medio ambiente.

Principio 26

Es preciso librar el hombre y a su medio ambiente de los efectos de las armas nucleares y de todos los demás medios de destrucción en masa. Los Estados deben esforzarse por llegar pronto a un acuerdo, en los órganos internacionales pertinentes, sobre la eliminación y destrucción completa de tales armas.

- II -

DECLARAÇÃO DO RIO SOBRE MEIO AMBIENTE E DESENVOLVIMENTO (1992)

A Conferência das Nações Unidas sobre Meio Ambiente e Desenvolvimento,

Tendo-se reunido no Rio de Janeiro, de 3 a 21 de junho de 1992,

Reafirmando a Declaração da Conferência das Nações Unidas sobre o Meio Ambiente Humano, adotada em Estocolmo em 16 de junho de 1972, e buscando avançar a partir dela,

Com o objetivo de estabelecer uma nova e justa parceria global por meio do estabelecimento de novos níveis de cooperação entre os Estados, os setores chave da sociedade e os indivíduos,

Trabalhando com vistas à conclusão de acordos internacionais que respeitem os interesses de todos e protejam a integridade do sistema global de meio ambiente e desenvolvimento,

Reconhecendo a natureza interdependente e integral da terra, nosso lar,

Proclama:

Princípio 1

Os seres humanos estão no centro das preocupações com o desenvolvimento sustentável. Têm direito a uma vida saudável e produtiva, em harmonia com a natureza.

Princípio 2

Os Estados, de conformidade com a Carta das Nações Unidas e com os princípios do Direito Internacional, têm o direito soberano de explorar seus próprios recursos segundo suas próprias políticas de meio ambiente e desenvolvimento, e a responsabilidade de assegurar que atividades sob sua jurisdição ou controle não causem danos ao meio ambiente de outros Estados ou de áreas além dos limites da jurisdição nacional.

Princípio 3

O direito ao desenvolvimento deve ser exercido, de modo a permitir que sejam atendidas equitativamente as necessidades de gerações presentes e futuras.

Princípio 4

Para alcançar o desenvolvimento sustentável, a proteção ambiental deve constituir parte integrante do processo de desenvolvimento, e não pode ser considerada isoladamente deste.

Princípio 5

Todos os Estados e todos os indivíduos, como requisito indispensável para o desenvolvimento sustentável, devem cooperar na tarefa essencial de erradicar a pobreza, de forma a reduzir as disparidades nos padrões de vida e melhor atender as necessidades da maioria da população do mundo.

Princípio 6

A situação e necessidades especiais dos países em desenvolvimento, em particular dos países de menor desenvolvimento relativo e daqueles ambientalmente mais vulneráveis, devem receber prioridade especial. Ações internacionais no campo do meio ambiente e do desenvolvimento devem também atender os interesses e necessidades de todos os países.

Princípio 7

Os Estados devem cooperar, em um espírito de parceria global, para a conservação, proteção e restauração da saúde e da integridade do ecossistema terrestre. Considerando as distintas contribuições para a degradação ambiental global, os Estados têm responsabilidades comuns porém diferenciadas. Os países desenvolvidos reconhecem a responsabilidade que têm na busca internacional do desenvolvimento sustentável, em vista das pressões exercidas por suas sociedades sobre o meio ambiente global e das tecnologias e recursos financeiros que controlam.

Princípio 8

Para atingir o desenvolvimento sustentável e mais alta qualidade de vida para todos, os Estados devem reduzir e eliminar padrões insustentáveis de produção e consumo e promover políticas demográficas adequadas.

Princípio 9

Os Estados devem cooperar com vistas ao fortalecimento da capacitação endógena para o desenvolvimento sustentável, pelo aprimoramento da compreensão científica por meio do intercâmbio de conhecimento científico e tecnológico, e pela intensificação do desenvolvimento, adaptação, difusão e transferência de tecnologias, inclusive tecnologias novas e inovadoras.

Princípio 10

A melhor maneira de tratar questões ambientais é assegurar a participação, no nível apropriado, de todos os cidadãos interessados. No nível nacional, cada indivíduo deve ter acesso adequado a informações relativas ao meio ambiente de que disponham as autoridades públicas, inclusive informações sobre materiais e atividades perigosas em suas comunidades, bem como a oportunidade de participar em processos de tomada de decisões. Os Estados devem facilitar e estimular a

conscientização e a participação pública, colocando a informação à disposição de todos. Deve ser propiciado acesso efetivo a mecanismos judiciais e administrativos, inclusive no que diz respeito a compensação e reparação de danos.

Princípio 11

Os Estados devem adotar legislação ambiental eficaz. Padrões ambientais e objetivos e prioridades em matéria de ordenação do meio ambiente devem refletir o contexto ambiental e de desenvolvimento a que se aplicam. Padrões utilizados por alguns países podem resultar inadequados para outros, em especial países em desenvolvimento, acarretando custos sociais e econômicos injustificados.

Princípio 12

Os Estados devem cooperar para o estabelecimento de um sistema econômico internacional aberto e favorável, propício ao crescimento econômico e ao desenvolvimento sustentável em todos os países, de modo a possibilitar o tratamento mais adequado dos problemas da degradação ambiental. Medidas de política comercial para propósitos ambientais não devem constituir-se em meios para a imposição de discriminações arbitrárias ou injustificáveis ou em barreiras disfarçadas ao comércio internacional. Devem ser evitadas ações unilaterais para o tratamento de questões ambientais fora da jurisdição do país importador. Medidas destinadas a tratar de problemas ambientais transfronteiriços ou globais devem, na medida do possível, basear-se em um consenso internacional.

Princípio 13

Os Estados devem desenvolver legislação nacional relativa a responsabilidade e indenização das vítimas da poluição e outros danos ambientais. Os Estados devem ainda cooperar de forma expedita e determinada para o desenvolvimento de normas de direito internacional ambiental relativas a responsabilidade e indenização por efeitos adversos de danos ambientais causados, em áreas fora de sua jurisdição, por atividades dentro de sua jurisdição ou sob seu controle.

Princípio 14

Os Estados devem cooperar de modo efetivo para desestimular ou prevenir a realocação ou transferência para outros Estados de quaisquer atividades ou substâncias que causem degradação ambiental grave ou que sejam prejudiciais à saúde humana.

Princípio 15

De modo a proteger o meio ambiente, o princípio da precaução deve ser amplamente observado pelos Estados, de acordo com suas capacidades. Quando houver ameaça de danos sérios ou irreversíveis, a ausência de absoluta certeza

científica não deve ser utilizada como razão para postergar medidas eficazes e economicamente viáveis para prevenir a degradação ambiental.

Princípio 16

Tendo em vista que o poluidor deve, em princípio, arcar com o custo decorrente da poluição, as autoridades nacionais devem procurar promover a internalização dos custos ambientais e o uso de instrumentos econômicos, levando na devida conta o interesse público, sem distorcer o comércio e os investimentos internacionais.

Princípio 17

A avaliação de impacto ambiental, como instrumento nacional, deve ser empreendida para atividades planejadas que possam vir a ter impacto negativo considerável sobre o meio ambiente, e que dependam de uma decisão de autoridade nacional competente.

Princípio 18

Os Estados devem notificar imediatamente outros Estados de quaisquer desastres naturais ou outras emergências que possam gerar efeitos nocivos súbitos sobre o meio ambiente destes últimos. Todos os esforços devem ser empreendidos pela comunidade internacional para auxiliar os Estados afetados.

Princípio 19

Os Estados devem prover oportunamente, a Estados que possam ser afetados, notificação prévia e informações relevantes sobre atividades potencialmente causadoras de considerável impacto transfronteiriço negativo sobre o meio ambiente, e devem consultar-se com estes tão logo quanto possível e de boa fé.

Princípio 20

As mulheres desempenham papel fundamental na gestão do meio ambiente e no desenvolvimento. Sua participação plena é, portanto, essencial para a promoção do desenvolvimento sustentável.

Princípio 21

A criatividade, os ideais e a coragem dos jovens do mundo devem ser mobilizados para forjar uma parceria global com vistas a alcançar o desenvolvimento sustentável e assegurar um futuro melhor para todos.

Princípio 22

As populações indígenas e suas comunidades, bem como outras comunidades locais, têm papel fundamental na gestão do meio ambiente e no desenvolvimento, em virtude de seus conhecimentos e práticas tradicionais. Os

Estados devem reconhecer e apoiar de forma apropriada a identidade, cultura e interesses dessas populações e comunidades, bem como habilitá-las a participar ativamente da promoção do desenvolvimento sustentável.

Princípio 23

O meio ambiente e os recursos naturais dos povos submetidos a opressão, dominação e ocupação devem ser protegidos.

Princípio 24

A guerra é, por definição, contrária ao desenvolvimento sustentável. Os Estados devem, por conseguinte, respeitar o direito internacional aplicável à proteção do meio ambiente em tempos de conflito armado, e cooperar para seu desenvolvimento progressivo, quando necessário.

Princípio 25

A paz, o desenvolvimento e a proteção ambiental são interdependentes e indivisíveis.

Princípio 26

Os Estados devem solucionar todas as suas controvérsias ambientais de forma pacífica, utilizando-se dos meios apropriados, de conformidade com a Carta das Nações Unidas.

Princípio 27

Os Estados e os povos devem cooperar de boa fé e imbuídos de um espírito de parceria para a realização dos princípios consubstanciados nesta Declaração, e para o desenvolvimento progressivo do direito internacional no campo do desenvolvimento sustentável.

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COMISIÓN DE DESARROLLO Y MEDIO AMBIENTE DE AMERICA LATINA Y EL CARIBE, INFORME "*NUESTRA PROPIA AGENDA*", 1990

(Excerptas)

(...) Nuestra región ha experimentado un proceso de democratización que no debe interrumpirse. Para alcanzar el desarrollo con equidad es necesaria un amplia participación de la sociedad civil en ese proceso. (p. IX).

(...) Hablar de derechos humanos (incluyendo el derecho a comer, a disponer de un techo, a la educación, a la salud, a tener ingresos, etc.), del medio ambiente, del apoyo a las democracias y a la diversidad cultural, tiene mucho mayor sentido cuando se lo hace en un contexto humano. (p. 14).

(...) Tampoco será posible el desarrollo sustentable sin una verdadera democracia. Si no profundizamos esa democracia para hacerla más participativa dándole mayor presencia a la sociedad civil y si no modernizamos las viejas estructuras de nuestros Estados para hacerlos más eficientes, será imposible que podamos romper las barreras que obstaculizan un desarrollo económico, social y ecológicamente viable. (...) Dentro de nuestra propia visión del desarrollo sustentable y como requisito a la vez de la democracia, el objetivo central de esa estrategia no puede ser otro que el mejoramiento de la calidad de vida para toda la población. Enfrentar la pobreza crítica que afecta a la mayoría de la población constituye en el presente la máxima prioridad para elevar la calidad de vida. (pp. 51-52).

(...) Un requisito fundamental es concebir una estrategia económico-social, que encuadrada dentro de los objetivos de un desarrollo sustentable, nos conduzca hacia una sociedad más igualitaria. (p. 78).

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NOTE OF THE EXECUTIVE DIRECTOR OF UNEP ON THE IMPLICATIONS OF THE "*COMMON CONCERN OF MANKIND*" CONCEPT ON GLOBAL ENVIRONMENTAL ISSUES

(To the UNEP Group of Legal Experts Meeting of Malta, of 13-15 December 1990)

(Excerpts)

1. In the course of the current decade we are up against a new range of global challenges: ozone layer depletion, global climate change, conservation of biological diversity being some of them. The global challenges proved to be difficult, if not impossible, to deal with on the basis of classic postulates of inter-state reciprocity of advantages, state-to-state liability, and traditional legal standing.

2. The world community is being faced with the necessity of prompt political and legal responses to cope with global environmental problems, which put at stake the very survival of human civilization, its present and future generations.

3. Some of possible responses can be found in newly emerged concepts of global commons, common heritage of mankind, intergenerational equity, ecological security. The most recent concept which is appropriate in this context is the concept of common concern of mankind.

4. The concept of "common concern of mankind" is deeply rooted in such concepts as common interest, global commons, common heritage of mankind and closely linked to the concept of inter-generational rights. Indeed, the significant controversies and conflicting interpretations which have appeared during application of the 'common heritage' approach in different areas like the law of the sea and space law inspired governments to choose another derivative, i. e., common concern, to serve concerted actions in equitable sharing of burdens in environmental protection, rather than of benefits from exploitation of the environmental wealths.

5. "Common concern" concept has at least two important facets: spatial and temporal. Spacial aspect means that common concern implies co-operation of all States on matters being similarly important to all nations, to the whole international community. Temporal aspect arises from long-term implications of major environmental challenges which affect the rights and obligations not only of present but also of future generations. (...)

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16. A general approach to the concept of common concern which has been introduced in a number of international documents, represents at the current stage a holistic paradigm aimed mainly at the global climate issue. The paradigm needs in-depth conceptual elaboration to expand its application to all major environmental challenges.

17. Certain common elements can be tentatively deduced from the analysis of the international documents quoted above. First, they give evidence that the concept of "common concern" serves as a consolidating factor for East-West-North-South environmental dialogue in spite of existing geographical, economic and political differences. It can also be stated that the common concern has acquired global character (not excluding its regional manifestations). The obligation to co-operate which stems from the concept should involve all countries and all levels of concerted actions. The ecological inter-dependence, which transpierces world community, has obtained not only spatial, but also temporal (inter-generational) parameters. (...)

22. A number of authoritative international lawyers (W. P. Gormley, Judge R. S. Pathak, A. A. Cançado Trindade) have decisively linked environmental protection to the human rights issue. Indeed, from the 1972 Stockholm Declaration the environmental protection has been always seen in human dimension. This indicates another possibility to consider the common concern concept as applicable to protection of fundamental human rights, in particular, the right to healthy and safe environment. Yet another aspect to be considered are the inter-generational rights (i.e., temporal facet of the common concern of mankind). A number of scholars have already included these rights into the category of 'collective' or 'solidarity' rights. These 'third generation' human rights were described, *inter alia*, as rights of every human being and of all human beings taken collectively (UNESCO Symposium on New Human Rights: The Rights of Solidarity, Mexico City, 1980, p. 30).

23. One more implication of temporal aspect of the "common concern of mankind" concept consists in the fact that many environmental effects manifest in a long time manner, what makes their predictability and timely mitigation a rather complicated and low-reliable matter. This again reinforces an already established assumption of vital importance and preferability of precautionary approach to any activity which may seriously affect common environmental concerns.

24. Along with new set of legal rights and obligations the concept of "common concern of mankind" triggers further institutional developments. The first step would be an enhanced use of the existing international institutions. This trend is easily detectable in recent international law developments. Both the 1986 Convention on Early Notification of a Nuclear Accident and the 1986 Convention on Assistance in the Case of a Nuclear Accident or Radiological Emergency upgrade the participation of the IAEA in submitting notifications and other relevant information and in rendering assistance. (...)

26. Joint efforts of governments, scientific community, scholars and public opinion are of crucial importance for the concept of "common concern of mankind" [so that it] does not rest as just a vague political formula, which could be used to legitimize lack of concrete actions by simply declaring an environmental concern. Only based on such efforts the concept may acquire necessary legal validity, thus transforming in a source of wide range of action-oriented binding obligations. The development of the concept of "common concern of mankind" would be not only of theoretical significance, but in the first place of practical viability for international law-making processes currently on the agenda. The nearest opportunity to test legal validity of the emerging theoretical hypotheses are the forthcoming negotiations on global climate and biological diversity conventions. The preparation of these conventions, if successfully accomplished, would create a unique input into the substantial content of the 1992 U. N. Conference on Environment and Development.

REPORT OF THE I MEETING OF THE UNEP GROUP OF LEGAL EXPERTS TO EXAMINE THE IMPLICATIONS OF THE *"COMMON CONCERN OF MANKIND"* CONCEPT ON GLOBAL ENVIRONMENTAL ISSUES (Malta, 13-15 December 1990)

The UNEP Group of Legal Experts to Examine the Concept of the "Common Concern of Mankind" on Global Environmental Issues held its first Meeting in Malta, on 13-15 December 1990. The Meeting was organized jointly by the United Nations Environment Programme (UNEP), the Ministry of Foreign Affairs and Justice of Malta and the University of Malta. The Group of Legal Experts was made up of the following participants: Dr. Mostafa K. Tolba (UNEP Executive Director and Chairman of the Group), Judge Manfred Lachs (International Court of Justice), Ambassador Julio Barboza (Argentina), Professor Antônio A. Cançado Trindade (Brazil), Mr. Tang Cheng Yun (China), Mr. Frank X. Njenga (Kenya), Mr. Patrick Szell (United Kingdom), Mr. Ajai Malhotra (India), Professor David Attard (Malta), Dr. N. Hassan Wirajuda (Indonesia), Dr. Iwona Rummel Bulska (UNEP), Dr. Alexandre Timoshenko (U.S.S.R.), and Mr. Lal Kurukulasuriya (Sri Lanka). Professor A.A. Cançado Trindade and Professor David J. Attard were designated co-*rapporteurs* of the Group. The following is a report of the four rounds of discussions held at the first meeting of the UNEP Group of Legal Experts on the "Common Concern of Mankind" Concept.

2. In the first round of discussions attention was centred on the origin, contents, rationale and implications of the concept of common concern of mankind. It was initially recalled that in the past the notion of *international* concern had been resorted to in the practice of U.N. organs in dealing with cases pertaining to the protection of human rights and self-determination of peoples, thus operating a reduction of the domain of domestic jurisdiction of States. This evolution was pushed forward by the judicial recognition in the *Barcelona Traction* Case (2nd Phase, 1970) that certain issues were the concern of all States creating obligations *erga omnes*. The present concept of *common concern of mankind*, which found expression in U.N. General Assembly Resolution 43/53 of December 1988 wherein climate change was so characterized, went much further, disclosing a pronounced temporal and social dimension (*infra*), and focusing on issues which were truly fundamental to all mankind. The concept was also being considered in other contexts of environmental law (such as biological diversity).

3. Still with regard to the origins of this new concept, there was general agreement that the distinct notion of common heritage of mankind had been marked by controversies around the element of exploitation of resources (e.g., of the seabed

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and ocean floors beyond national jurisdiction). The more recent concept of common concern of mankind, in its turn, did not have such proprietary connotations and this proved more suitable to address global environmental issues (e.g., depletion of ozone layer and global climate change); hence its apparent growing acceptance, in the context of such global issues (e.g., the 1989 Hague Declaration, the 1990 Langawi Declaration), in the last three years, with the emphasis on the element of *protection*. It was pointed out that regimes of protection have a specificity of their own, based upon considerations of *ordre public*, transcending reciprocity,

4. The UNEP Secretariat Note on the Common Concern of Mankind Concept, circulated to participants, proved to be a thoughtful and useful basis for discussion of the contents and rationale of the concept. The starting-point of the debates which followed was the general recognition of the legitimate interest of mankind to concern itself with issues pertaining to global climate change (even when activities took place within a country's territory). Hence the notion of *commonness* (affecting all humankind). A global threat to the environment could become a common concern of mankind, bringing to the fore the notion of obligations *erga omnes*. It was recalled that pertinent elements could be detected in explanatory theories, such as: the idea of freedom of access and equitable sharing by all (doctrine of *res communis*), the idea of non-appropriation and *gestion* under public law (doctrine of international public domain), the idea of protection of a common good and extending the beneficiaries to future generations (doctrine of [public] trust). Hence the constitutive elements of common concern, namely: involvement of all countries, all societies, and all classes of people within countries and societies; long-term temporal dimension, encompassing present as well as future generations; and some sort of sharing of burdens of environmental protection (*infra*).

5. It was suggested that the concept of common concern of mankind ought to be approached from a novel juridical perspective. The term *mankind* from the start disclosed the link with the human rights framework (*infra*) and the long-term temporal dimension (encompassing also future generations). The term *concern* suggested a primary focus on the *causes* of the problems (e.g., emissions of certain gases to the atmosphere causing severe environmental degradation to the detriment of the humankind), thus stressing the *preventive* character of environmental protection (the general obligation of due diligence); but it also focused on consequential effects or *responses* to be taken (e.g., application of pollution control standards, recognition of rights of action at national and international levels, and establishment of institutional framework for protection). The term *common* (as in "common concern") was employed in a same and parallel way as "public" (as in "public order") in domestic law, given the decentralization of the international legal order; the notion of "common concern" appeared thus closely related to such concepts as "obligations *erga omnes*","*jus cogens*", "common heritage" and "global commons". Attention was drawn to the distinct connotations — if not ambiguities

— in the common law system of the term *interest*, which, however, were not present in the civil law system, thus allowing in the light of this latter to speak of a "common interest of mankind".

6. As to the implications of the concept of common concern of mankind, it was first pointed out that the present discussions of the UNEP Group of Legal Experts meant to lay down the normative basis for the ongoing negotiating process preparatory to the 1992 U.N. Conference of Environment and Development (working out of normative principles); hence the need to clarify the concept at issue, from which — once definitively accepted by the international community — rights and obligations would flow in the near future when dealing with global environmental issues. The need of relating preventive with corrective measures was also stressed: it was commented that the current corrective measures are here being approached from an intra-generational perspective, while preventive measures seem to lend themselves more easily to an inter-generational perspective.

7. Another implication was identified in the need to conciliate the global treatment that issues, such as climate change, require with the differential treatment that many countries (e.g., developing countries) require. The 1987 Montreal Protocol on Substances that Deplete the Ozone Layer was recalled in that connection. There was special emphasis on the need to balance sovereign rights of States with the interests of the international community in respect of environmental protection (Principle 21 of the Stockholm Declaration on the Human Environment having been referred to in that respect); this question brought to the fore the central issue of the *sharing of burdens* in environmental protection.

8. In fact, the whole second round of discussions centred on this last point. The majority of participants supported the notion of *equitable* sharing of burdens, whereas some preferred the expression *fair* sharing of burdens. The former recalled the application of equitable considerations in the law of the sea maritime delimitation; the latter referred to the distinct connotations of the equitable principle. There was general agreement, however, that some sort of sharing of burdens there must certainly be. Some experts regarded sharing of burdens as an important subsidiary principle instrumental in the application of the common concern of mankind concept itself (collective or concerted actions); other experts went further, in expressing the view that the success or failure of the very concept of common concern of mankind would ultimately depend on the recognition or acceptance of the principle of equitable sharing of burdens.

9. It became clear that the present debates related essentially to the sharing of costs and benefits of environmental protection. *All* countries shared a common concern for the protection of the global environment and *all* countries had to contribute to the achievement of that protection: equitable sharing of burdens meant however that often some countries were to give greater contributions to that effect than others (the example of the 1987 Montreal Protocol having again been invoked in that connection). The experts developed two sets of considerations, in the form of

guiding principles in that regard. First, in the present context equitable or fair sharing of burdens meant much heavier burdens on developed countries, proportional to their historical and present responsibility for atmospheric pollution, and for excessive levels of *per capita* emissions of gases deteriorating the atmosphere (application of the "main responsibility" principle). Secondly, in the present context equitable or fair sharing of burdens also meant, rather than imputation of liability and responsibility on States, the account to be taken of the distinct economic, financial and technological capabilities of States to contribute to the resolution of this problem (preventive and corrective action). Both guiding principles were to be taken into consideration.

10. It was exemplified that conversion of means of production so as not to emit harmful substances into the environment required technology transfer (to developing countries) at affordance cost and technical and financial assistance (to developing countries) at much higher levels, which could only be achieved if developed countries came to regard them as duties emanating from the common concern of mankind concept in respect of adverse climate change. The opinion was voiced that it was impossible to detach "common concern" (linked to common responsibilities) from issues such as poverty and underdevelopment, and that environmental considerations should thus not be advanced to introduce conditionalities in development financing. It was agreed that obligations should here be met in accordance with the capacities of the countries (equitable or fair sharing of burdens *in response* to a common concern of mankind).

11. The third round of discussions centred on the relationships between environmental protection and human rights protection. It was initially pointed out that resort to the concept of common concern of mankind, besides disclosing the link with the human rights framework, warned that one was here before a crucial question of *survival*, which brought to the fore the fundamental right of all to live in a clean, safe and healthy environment. Hence the fundamental importance of the human rights framework also for environmental protection. Some participants recommended that the theory of "generations of human rights", in particular, was preferably to be avoided in view of its inadequacies. There was on the main issue general agreement that environmental protection and human rights protection were in fact linked and could not be divorced from each other, and that emphasis should here be laid on fundamental rights.

12. The framework of human rights, with emphasis on social dimension and participation, was regarded as more appropriate than the framework of international ecological security, with emphasis on the State system, for approaching global environmental issues. It was pointed out that the preventive dimension was present in both environmental protection and human rights protection (in the instruments of protection themselves, in their evolutionary interpretation, in the evolving notion of *potential* victims). It was considered important to bring together the evolutions of environmental protection and human rights protection; they disclosed many

affinities and both underwent a process of globalization. It was argued that a bridge between the two lay in the fundamental rights to life and health in their wide dimension, comprising negative as well as positive measures, resting at the basis of the *ratio legis* of the two regimes of protection and paving the way for the recognition and crystallization of the right to a healthy environment. It was further argued that the protection of vulnerable groups (e.g., indigenous populations) lay at the basis of environmental protection and human rights protection, thus disclosing the need to bring together human and environmental considerations. The need was pointed out to develop further attention and research on the question of the implementation of the right to a healthy environment, in its individual and collective dimensions.

13. The fourth and last round of discussions concentrated on the alternative to a Convention — either on Climate or on Biological Diversity — to be adopted at the forthcoming 1992 U.N. Conference on Environment and Development. It was stressed that such [future] Convention should attract support from as many countries as possible. In case it were not adopted at the 1992 Conference, the possibility of a Code of Conduct was raised; other alternatives mentioned were a Declaration of Principles (by the U.N. General Assembly) or else a Framework of Principles and Guidelines. It was suggested that, should a Convention not be reached by 1992, the negotiatory process should continue even after that date, as one should not sacrifice content for expediency.

14. At the end of the debates, it became clear that a couple of points remained to be considered in due course, e.g., issues pertaining to the implementation of the "common concern" concept, to the ways and means whereby the concept could develop into an institution of public international law, to the methods to be devised for implementation, and to the corresponding organizational framework. It was decided that the UNEP Group of Legal Experts on the "Common Concern of Mankind" Concept was to hold its second meeting in the last week of March 1991, at a place still to be determined.

Professor A.A. CANÇADO TRINDADE
Professor D.J. ATTARD
Co-*Rapporteurs* of the UNEP Group of Experts

REPORT OF THE II MEETING OF THE UNEP GROUP OF LEGAL EXPERTS TO EXAMINE THE IMPLICATIONS OF THE *"COMMON CONCERN OF MANKIND"* CONCEPT ON GLOBAL ENVIRONMENTAL ISSUES (Geneva, 20-22 March 1991)

1. The first meeting of the UNEP Group of Legal Experts to examine the concept of the common concern of mankind in relation to global environmental issues was held in Malta on 13-15 December 1990. The meeting was organized jointly by the United Nations Environment Programme (UNEP), the Ministry of Foreign Affairs and Justice of Malta and the University of Malta.

2. The second meeting took place in Geneva on 20-22 March 1991 and was attended by Dr. Mostafa K. Tolba (UNEP Executive Director), Prof. Antônio A. Cançado Trindade (Brazil), Prof. Sun Lin (China), Mr. Frank X. Njenga (Kenya), Mr. Ajai Malhotra (India), Prof. David Attard (Malta), Ambassador Juan Antonio Mateos Cicero (Mexico), Mr. Alexandre Timoshenko (USSR), Mr. Amdan Mat Din (Malaysia), Mrs. Iwona Rummel-Bulska (UNEP). The session had five rounds of discussions.

3. In his introductory statement the Executive Director of UNEP Dr. Mostafa K. Tolba drew the attention of the participants to the growing interest of States in the concept of common concern of mankind particularly within the context of negotiations on legal instruments on climate change and conservation and sustainable use of biological diversity. He identified the following aspects of the concept of common concern of mankind which require further consideration and elaboration by the Legal Experts:

- possible implications of the concept for specific obligations in the relevant international treaties;
- implication for the human right to a healthy environment;
- implications with respect to the issues of equitable burden-sharing and fair compensation.

Several other issues were identified as requiring consideration by the Legal Experts:

- elaboration of an Earth Charter as a possible outcome of the United Nations Conference on Environment and Development;
- environmental implications of the Gulf War.

4. During the general discussion on the concept of common concern of mankind, the Experts reiterated that the concept still has no legal consequences in terms of rights and duties. It was stressed that the concept should not infringe the

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sovereign right of States and, in this context, a point was raised whether it is desirable to narrow down the scope of the concept and its application and to confine it to global environmental issues which may cause significant adverse effects upon the environment. It was re-emphasized that the common concern concept was not meant to substitute the concept of common heritage. There was a general understanding that at the current stage the common concern of mankind may serve as a guiding principle rather than as a legal rule. The responsibility and cooperation aspects of the concept were further emphasized.

5. While discussing the practical application of the common concern concept, it was stressed that the current global environmental agenda has been tailored mainly according to the interests of the developed countries. The world community needs an improved and comprehensive international environmental agenda which should also incorporate the issues of particular concern to developing countries, e.g., eradication of poverty, desertification, soil erosion, health, education, nutrition, urbanisation and housing. It was agreed that more attention by the international community would be required with respect to environmental protection of global commons. The provision of a life of dignity to all in a clean, safe and healthy environment should be a matter of common concern of mankind.

6. The subject of equitable and fair burden-sharing was discussed in detail at the first meeting of the Group. It was re-emphasized by the Experts as an important implication of the common concern concept. It was agreed that the use of the term "equitable" would be preferable because of its acceptance by general international law and in particular, in relevant decisions of the International Court of Justice. At the same time it was pointed out that the principle of fair burden-sharing and compensation could be applicable in some specific cases (e.g., access to biological diversity resources).

7. The Experts considered the principles relating to common concern of mankind which could be reflected in a possible Convention on Biological Diversity. It was acknowledged that each State had the full sovereign right to exploit its natural resources. It was also felt that the informal innovation by local peoples — the concept of farmers' rights — would also need to be recognized and duly rewarded. The Experts stressed that the additional burden on developing countries, due to the protection of their biological diversity, must be recognized in any protection of their biological diversity, and met by new and additional funding to be provided by the developed countries. It was stressed that the benefits of research in bio-technology should be equitably shared and made available to the developing countries which, in most cases, were the original source of the gene pools on which the research was based. The Experts further emphasized the importance of recognition of the direct linkage between the conservation of biological diversity in developing countries and access to their bio-material, with: (a) the access of developing countries to end products made by using their bio-material and to the relevant technologies, and (b) the equitable sharing of the benefits and profits from

such use of bio-material with the country of origin of such bio-material. In interpreting equitable considerations one has to be innovative. It should be a legal reflection of a full scale global partnership, which simultaneously seeks to protect the environment while looking to the upliftment of the developing countries.

8. Against the background of the consideration of the issue at their first meeting, the Experts further examined the human right to a safe and favourable environment given the growing attention of the world community to the subject. It was acknowledged that this issue had important implications for developing countries' problems with direct bearing on living conditions such as eradication of poverty, demographic pressures, health and sanitation, education, nutrition, housing and urbanization, and for translating the internationally accepted right to development into reality.

9. A discussion was held on a possible new code of international environmental principles (e.g., in the form of an Earth Charter) to be elaborated by the 1992 United Nations Conference on Environment and Development. It was felt that the principles and recommendations emanating from the 1972 Stockholm Conference on Human Environment needed to be re-assessed. The Experts pointed out that the possible new code should place further emphasis on addressing the issues of environment and development in an inter-related manner. While not incorporating legal obligations such a code could be an authoritative statement of the world community on the issues of environment and development.

10. The matter of institutional authority in respect of issues characterized as common concern of mankind was raised. Suggestions as to which institutional authority this may be were considered, such as the U.N. General Assembly, the Security Council, the International Court of Justice (chambers), and strengthening the role of the UNEP Governing Council.

11. In the deliberations on the issue of the ecological warfare its relevance to the environmental consequences of the Gulf War was examined. It was acknowledged that war produces environmental harm even when the specific objective was not to inflict environmental damage. The following means and methods of the hostile activities harmful to the environment were identified: a) warfare of any kind with environmental implications; b) ecological warfare where the environment, its components or ecological processes are used as weapons. The magnitude of potential environmental damage has expanded considerably as a result of development and availability of more powerful and sophisticated weaponry.

Acknowledging the complexity of defining "ecological warfare" the Experts put forward certain preliminary considerations:

- deliberate use of the environment: as a means of destruction, damage, or injury; and

- the extent of environmental damage incurred in relation to the widespread, long-lasting or severe effects.

In this respect the term "ecological aggression" as an alternative to the term "ecological warfare" was suggested. It was recognized that the difficulties to define "ecological warfare" went along with the difficulties to apply existing law. In particular, a possible applicability of the 1977 First Additional Protocol to the 1949 Geneva Conventions on Humanitarian Law and of the 1977 Convention on the Prohibition of Military or any other Hostile Use of Environmental Modification Techniques was considered.

12. It was emphasized that ecological warfare could cause injury, not only to the hostile States themselves, but also to third States, and to the environment including areas beyond national jurisdiction, to the international community as a whole, thus making it a common concern of mankind. Within the context of ecological warfare, the problem of ecological refugees was raised: it was suggested that this issue should also be considered in broader terms covering ecologically displaced persons.

13. The Experts discussed various options for legal remedies against ecological warfare. There was a proposal to qualify ecological warfare as an international crime. A need was emphasized for a wider involvement of the U.N. General Assembly with respect to ecological warfare/ecological aggression.

14. It was strongly felt that the UNEP Governing Council should play a prominent role in the study and consideration of the environmental ramifications of ecological warfare/ecological aggression. The appropriateness for the UNEP Governing Council's preventive and remedial actions with respect to ecological warfare/ecological aggression was emphasized.

15. The Experts identified the following aspects which would require further consideration, *inter alia*:

- ecological harm caused by warfare of any kind;
- the use of the environment as an instrument of war;
- protection of sites having specific ecological value and vulnerability of sites with destructive potential to the environment;
- prohibition of certain categories of weapons of mass destruction;
- ecological refugees/ecologically displaced persons;
- damage beyond the territories of the hostile parties;
- implications for common concern of mankind;
- legal remedies and institutional mechanism.

16. In view of the complexity and variety of implications of ecological warfare/ecological aggression, the Legal Experts felt that a thorough and detailed study of the subject was required. For this purpose the Group could hold two or more meetings in 1991 after the 16th session of the UNEP Governing Council. Such

a study would cover a substantive report on ecological warfare/ecological aggression containing not only a detailed investigation of the issue, but also recommendations on possible global responses and the relevant role of the U.N. system.

17. Upon being requested, the Legal Experts considered a number of issues concerning the Antarctica which had been raised at the 45th session of the U.N. General Assembly. Given the timing of the current negotiations on Antarctica issues and the sensitivity involved the Experts felt that certain constraints existed. The Experts further felt that these issues should be reassessed at a later stage, when the results of the forthcoming negotiations become available. However, in the Experts' view any serious deterioration of the environment in the Antarctica would be unwise and should be avoided. If appropriate, this issue could also be further examined when this Group of Legal Experts next meet.

UNEP Secretariat

REPORT OF THE UNITED NATIONS DECADE OF INTERNATIONAL LAW SYMPOSIUM ON DEVELOPING COUNTRIES AND INTERNATIONAL ENVIRONMENTAL LAW (Beijing, China, 12-14 August 1991)

INTRODUCTION

A Symposium on Developing Countries and International Environmental Law was sponsored by the Chinese Government in Beijing, China, on 12-14 August 1991, which was organized by the Ministry of Foreign Affairs of China with the cooperation of the United Nations, the United Nations Environment Programme, the Ford Foundation, China's National Environmental Protection Administration, the Chinese Society of International Law and the Environmental Law Institute of Wuhan University.

The Symposium was attended by Experts from both developing countries and developed countries and from relevant international organizations. Dr. Mostafa Tolba, Executive Director of the United Nations Environment Programme (UNEP), the Honorable Mr. Ni Zhengyu, Judge of the International Court of Justice (ICJ), Dr. F. Njenga, Secretary-General of the Asian-African Legal Consultative Committee (AALCC), and Mr. Wang Tieya, Vice-Chairman of the Chinese Society of International Law (CSIL) also participated in the Symposium as special invitees.

OPENING ADDRESSES

In his opening address, H. E. Mr. Qian Qichen, State Councillor and Minister of Foreign Affairs, stressed the importance of international environmental law. He said that international environmental law is growing into an important field of progressive development and codification of international law and that during its development process, many new concepts and new ideas have emerged which call for in-depth study and discussions by jurists of various countries. He also said that the key issue here is whether or not the developed countries will truly understand the special conditions and needs of the developing countries, give their sincere accommodation to such conditions and needs, and translate such understanding and accommodation into international instruments in the form of corresponding rights and obligations.

In his statement titled "Tapping Our Boundless Creativity", Dr. M. Tolba, Executive Director of UNEP, elaborated profoundly on various important aspects of the development of international environmental law. He said that writing laws to

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save our planet constitutes an entirely new challenge in the long tradition of law. An international treaty to deal with global environmental problems without clear provisions for technology transfer, and for assistance in the development or revival of indigenous techniques and technologies, is not worth its weight in paper. International environmental laws need to build regimes which ensure that additional financial resources are available to enable developing countries to acquire cleaner technologies. The only guarantee that international environmental law will continue to develop into a comprehensive body of working legal instruments so badly needed is to ensure that we anticipate new environmental problems and prevent them and correct the existing damage.

Mr. Qu Geping, Director of China's National Environmental Protection Administration, said in his speech that China has attached great importance to environmental protection and that China has always held a positive and prudent attitude towards the law-making activities of international environmental law.

On behalf of Mr. K. Fleischauer, Under-Secretary-General, the Legal Counsel of the United Nations, Mr. A. Adede congratulated the convocation of this Symposium and conveyed his conviction that the Symposium will indeed make a tangible contribution to the implementation of the programmes of the United Nations Decade of International Law.

In the afternoon, H. E. Mr. Li Peng, Premier of the State Council of the People's Republic of China, received all the participants in Zhongnanhai.

SUMMARY OF PROCEEDINGS

In the first session of the Symposium, the participants elected Professor Sun Lin, Director of the Treaty and Law Department of China's Foreign Ministry, Chairman of the Symposium. Professor Antônio A. Cançado Trindade from Brazil and Mr. Ajai Malhotra from India were elected *Rapporteurs*. Mr. Liu Daqun from the Treaty and Law Department of the Chinese Foreign Ministry was appointed Secretary.

In his introductory remarks, Professor Sun Lin, Chairman of the Symposium, said that the purpose of the Symposium is to strengthen the common understanding of the international community, the developed and developing countries in particular, to enhance the development of international environmental law and to narrow down their differences. He also said that he has been in the hope that this Symposium could serve as a starting point of a long process with a view to having some preliminary results.

A summary report, following a wide-ranging exchange of views in which on some aspects differing perceptions were put forward in a constructive spirit, follows:

Common Concern of Mankind

It was felt that the recently emerged concept of common concern of mankind was sufficiently flexible to warrant its general acceptance as providing a broad basis for the consideration of global environmental issues. It was this flexibility that made the concept readily acceptable. To attempt to provide it with specific attributes or legal connotations at this stage would perhaps not serve the interest of its further development. Acknowledging that protection of the environment and development were indivisible and could not be considered in isolation from each other, it was felt that the concept of common concern of mankind should relate both to environment and to development.

Sharing of Burdens

It was emphasized that underlying the concept of "common concern" was the requirement to forge a global partnership on the international plane which would simultaneously seek to protect the environment while addressing the developmental needs of the developing countries. Accordingly, the developed countries, being primarily responsible for the historic and current emission of pollutants into the environment, bore the main responsibility for cleaning up the environment. This widely-accepted "main responsibility" principle must provide the basis for action in the environmental field. Moreover, if one were to consider the financial, economic, scientific and technological capabilities for undertaking such corrective action relating to the environment, it becomes quite clear that it is the developed countries which must shoulder most of the burdens. Equally, the developing countries must participate in efforts to clean up the environment, taking into account their own specific capabilities and their national plans, programmes and priorities relating to development and the environment.

Sovereign Rights

International cooperation in the field of environment and development must fully respect the sovereign rights of States. Its role should be to support and supplement, not to supplant, national efforts.

Funding and Technology Transfer

It was agreed that adequate, new and additional funding should be required by developing countries to enable them to join in international cooperative efforts to protect the environment. It was stressed that transfer of environmentally sound technologies to the developing countries should be made available on a preferential and non-commercial basis. Such technologies should not simply become another

source of excessive commercial profit for the developed world. It was stressed that the Multilateral Fund set up under the Montreal Protocol and the system of its management and control provided an excellent example to be emulated as and when other funding mechanisms were established under international legal instruments presently being negotiated. While reference was made to the Global Environmental Facility, it was, however, felt that in its present form the GEF was quite inadequate in addressing the pressing environmental concerns of the developing countries. There was also a consensus that the incorporation of environmental concerns and considerations in development planning and policies should not be used to introduce new forms of conditionality in aid or in development financing.

Special Needs of Developing Countries

It was felt that unless widespread and abject poverty in the developing countries was tackled head on, the international community would not be avoiding at its own peril facing up to a major contributor to environmental degradation in the developing world. The environmental problems of developing countries were often a reflection of the inadequacy of development. Addressing these environmental problems in their totality and in a balanced manner would require that full cooperation be extended to the developing countries in their efforts to break the vicious circle linking poverty, underdevelopment and environmental degradation. Special attention would have to be given to the particular needs and concerns of the least developed countries. Solution of global environmental problems would have to be accompanied by solution of the problem of global poverty.

The concept of "sustainable development" included the fostering of economic growth, the meeting of basic domestic needs (including in areas such as health, nutrition, education and housing) and the eradication of poverty so as to provide to all a life of dignity in a clean, safe and healthy environment. While considering the concept of "sustainable development", it was important to remember that its major focus had to be on the "development" aspect of the concept.

Environmental Protection and Human Rights

There was general consensus that there were linkages between the domain of environmental protection and that of human rights, provided mainly by the focus on certain fundamental rights (*inter alia*, the right to life and the right to health). It was further indicated that the emergence of the right to a healthy environment and the right to development was meant to enhance rather than to restrict, other rights, given their indivisibility and interrelatedness. It was generally felt that

environmental protection also amounted ultimately to a quest for survival and the protection of human health.

Settlement of Disputes

Several mechanisms of dispute-settlement appropriate for environmental protection were surveyed; particular emphasis was laid on dispute-avoidance by means of exchange of information or consultation. It was felt that any new legal instruments which may be negotiated should contain in-built mechanisms for settlement of disputes; reference was, in this context, made to the mechanism for dispute-settlement contained in the 1985 Vienna Convention on the Protection of the Ozone Layer as a good model to be followed.

RECOMMENDATIONS

During the discussions, the following areas were identified as requiring further consideration for the progressive development of international environmental law in the context of the U.N. Decade of International Law, 1990-1999:

(a) Progressive refinement of the concept of the right to development;

(b) Development of the evolving concept of the right of all to a life of dignity and adequate standard of living in a clean, safe and healthy environment;

(c) Equitable sharing of burdens as a legal basis for transfer of adequate, new and additional financial resources to developing countries;

(d) A legal basis for transfer of environmentally sound technologies to developing countries on preferential and non-commercial terms;

(e) Progressive and timely refinement of the "common concern of mankind" concept with reference to its implications for both environment and development;

(f) Elaboration of measures directed to ensure that the transnational corporations operating in developing countries carry out their special responsibility for environmental protection anbd sustainable development in those countries;

(g) The sovereign rights of States over their natural resources.

Professor A.A. CANÇADO TRINDADE
Mr. A. MALHOTRA
Co-*Rapporteurs* of the Beijing Symposium

PARTICIPANTS:

Participants from the developing countries:

Bangladesh	Mr. Toufiq Ali
Brazil	Prof. Antônio A. Cançado Trindade
China	Mr. Sun Lin
	Prof. Han Depei
	Ms. Song Li
Chile	H.E. Mr. Oscar Pinochet de la Bara
Egypt	Dr. Abdllah Hassan Al Ashal
Ghana	Mr.Larsey Mensah
India	Mr. Ajai Malhotra
Indonesia	Mr. Moestadji
Malaysia	Mr. Amdan Bin Mat Din
Mexico	Ms. Diana L. Ponce-Nava
Senegal	Mr. Bakary Kante
Yugoslavia	Dr. Budislav Vukas

Participants from the developed countries and organizations:

Australia	Mr. Michael Smith
Germany	Mr. Arsgar O. Vogel
U.K.	Dr. Glen Plant
U.S.A.	Prof. Stephen McCaffrey
U.N.	Mr. Adronico Adede
	Mr. Roy S. Lee
UNEP	Dr. Iwona Rummel-Bulska

Special Invitees:

UNEP	H.E. Dr. Mostafa K. Tolba
The Ford Foundation	Mr. Peter Harris
	Mr. Johnathan Hecht
International Court of Justice	Judge Ni Zhengyu
Iran - U.S. Claims Tribunal	Mr. C.W. Pinto
Asian-African Legal Consultative Committee (AALCC)	Mr. Frank X. Njenga
International Council of Environmental Law (ICEL)	Mr. Erkki Hollo
Chinese Society of International Law	Prof. Wang Tieya

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WORKING PAPER ON "HUMAN RIGHTS AND THE ENVIRONMENT" PREPARED BY PROFESSOR A. A. CANÇADO TRINDADE FOR THE UNITED NATIONS ENVIRONMENT PROGRAMME (UNEP) (04 September 1991)

(Excerpts)

(...) Just as concern for human rights protection can be found in the realm of international environmental law (Preamble and Principle 1 of the 1972 Stockholm Declaration on the Human Environment, Preamble and Principles 6 and 23 of the 1982 World Charter for Nature, Principles 1 and 20 proposed by the World Commission on Environment and Development in its 1987 report), concern for environmental protection can also be found in the express recognition of the right to a healthy environment in two recent human rights instruments, namely: the 1988 Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Article 11), and the 1981 African Charter on Human and Peoples' Rights (Article 24); in the former, it is recognized as a right of "everyone" (§ 1), to be protected by the States Parties (§ 2), whereas in the latter it is acknowledged as a peoples' right.

(...) Furthermore, the protection of vulnerable groups (...) appears today at the confluence of international human rights law and international environmental law: (...) the issue has been approached on the basis of both human and environmental considerations. (...)

(...) The basic right to life, encompassing the right of living, entails negative as well as positive obligations in favour of preservation of human life. (...) It establishes a "link" between the domains of international human rights law and environmental law. (...) It has as extensions or corollaries the right to a healthy environment and the right to peace (...). (...) It lies at the basis of the ultimate *ratio legis* of the domains of international human rights law and environmental law, turned to the protection and survival of the human person and mankind.

Inextricably interwoven with the right to life itself, the right to health entails *negative* obligations (not to practice any act which can endanger one's health (...)) as well as *positive* obligations (to take all appropriate measures to protect and preserve human health (...)).

(...) [In the *E.H.P. versus Canada* case (1982), concerning disposal of nuclear wastes, the Human Rights Committee's (under the U.N. Covenant on Civil and Political Rights)] acceptance of the complainant's *jus standi* (on her behalf and also on behalf of the 129 Port Hope residents concerned) added to the Committee's

acknowledgement of the importance of the matter raised in the communication by the author's reference to "future generations" as an expression of concern (... bear) witness of the inter-relatedness between environmental protection and human rights protection, in particular when fundamental rights, such as the rights to life and to health, are at stake. (...)

If the right to a healthy environment is taken (...) as a "procedural" right, the right to a due process before a competent organ, (... [it is]) thus assimilated to any other right guaranteed to individuals and groups of individuals. This right entails, as corollaries, the right of the individual concerned *to be informed* of projects and decisions which could threaten the environment (the protection of which counting on preventive measures), and the right of the individual concerned *to participate* in the taking of decisions which may affect the environment (active sharing of responsibilities in the management of the interests of the whole collectivity). To the rights to information and of participation one can add the *right to available and effective domestic remedies* [cf. 1982 World Charter for Nature, § 23] (...).

The recognition of the right to a healthy environment (...) enriches and reinforces existing human rights and brings to the fore other rights in new dimensions [e.g., right of citizen participation, rights to information and to education (in environmental matters)]. Once asserted as a *human right*, the right to a healthy environment, rather than entailing restrictions to the exercise of other rights, comes to enrich the *corpus* of recognized human rights. (...)

Given that human rights protection antedates environmental protection in time, it is to be expected that the experience accumulated in the implementation of the former can be of use and value to the implementation of the latter. Some inspiration can possibly be derived from the experience of application, e.g., of the methods of reporting and fact-finding as developed in the international protection of human rights for the improvement of the international implementation of instruments on environmental protection. (...)

Addendum:

The endeavours undertaken so far of co-ordination of mechanisms — in particular the reporting systems – in the field of human rights protection can be of some avail and value for the consideration of the implementation of instruments on environmental protection. In 1982 the U. N. General Assembly (resolution 37/44) drew attention to the fact that many periodic reports under human rights treaties were outstanding and, in some cases, initial reports were several years overdue; it thus requested the Secretary-General to address the issue so that the situation could be improved.

In August 1984 the Secretary-General organized at Geneva the first meeting of chairmen of U.N. human rights supervisory organs. The chairmen proposed: exchange of information and co-ordination of guidelines for submission of reports,

larger periodicity for reports, consolidation and uniformization of the proposed guidelines, and establishment of a programme of advisory services and technical assistance to States Parties. In 1985 the General Assembly (resolution 40/116) took note "with appreciation" of the compilation of general guidelines for reports elaborated by the supervisory organs.

Pursuant to another request by the General Assembly (resolution 44/135), the second meeting of chairmen of U.N. human rights supervisory organs took place at Geneva in October 1990. Attention was again drawn to the importance of timely reporting by all States Parties, as well as to the following other points: provision for funding to supervisory organs under U.N. human rights treaties from the regular budget of the United Nations, cross-references by States Parties to information contained in their reports submitted under other U.N. human rights instruments, promotion of greater interaction among supervisory organs (including the holding of joint sessions of working groups of two or more supervisory organs), application of consolidated guidelines (especially for the initial part of States Parties' reports) and further exchange of information, greater use of advisory services and technical assistance programmes organized by the United Nations.

In the field of human rights protection, *co-ordination* assumes a distinct meaning in respect of each mechanism employed. Thus, with regard to the *petitioning* system, co-ordination has been taken to mean the avoidance of conflict of jurisdiction, of duplication of proceedings and of conflicting interpretation of corresponding provisions of co-existing international instruments by the supervisory organs. With regard to the *reporting* system, it has been taken to mean the consolidation of uniform guidelines (concerning form and contents) and the standardization of reports. And with regard to the *fact-finding* system, it has been taken to mean the regular exchange of information and reciprocal consultations between the supervisory organs concerned. The elements above referred to, and the experience on the present issue of implementation developed in the field of human rights protection can be of use for the devising and improvement of methods of implementation of instruments on environmental protection.

Brasilia, 04 Sept. 1991.

A.A.C.T.

WORKING PAPER ON "INTERNATIONAL ENVIRONMENTAL LAW: PRINCIPAL ISSUES CONCERNING THE AMERICAN STATES" PREPARED BY PROFESSOR A. A. CANÇADO TRINDADE FOR THE O.A.S. INTER-AMERICAN JURIDICAL COMMITTEE (06 November 1991)

Excerpts

The OAS Inter-American Juridical Committee has decided to conduct a legal study on the "efforts to establish a body of environmental law in the Americas" (OAS, CP/RES. 557 (848/91) of 1991, and OEA/Ser. Q, CJI/RES. II. 9/91, of 1991). For that purpose, the OAS Inter-American Juridical Committee has requested me to prepare a working paper indicating which are, in my opinion, the *principal environmental issues concerning the American States* nowadays, from the standpoint of *international environmental law*. To that end, I shall first identify the general traits of the evolution of international environmental law and the sectors or areas in relation to which action — in varying degrees — has been taken in the course of that evolution; the way will then be open for the identification of the main environmental priority concerns of Latin American and Caribbean countries today, with attention further turned to the interrelatedness of environment and development concerns and the complementarity of international instruments at global and regional levels dealing with the same issues and supported by national legislation and management. (...)

In fact, one of the most substantial inputs in the current *travaux préparatoires* for UNCED in 1992 has been that of the countries of Latin America and the Caribbean. The general framework for regional action in preparation for UNCED-92 is provided by the 1989 Brasilia Declaration on the Environment, adopted at the VI Ministerial Latin American and Caribbean Summit of March 1989. The Declaration stressed that the improvement of economic and social conditions of life was "the key to preventing the defacement of the environment" in the countries of the region (§ 3). While recognizing "the imperative need to strike a balance between socioeconomic development and environmental protection and conservation through the proper management of natural resources and control of environmental impacts" (§ 1), the Declaration, after recalling the sovereign right of States "to administer freely" their natural resources (§ 2), further emphasized the gravity of the *external debt problem*, the solution of which appears as an essential condition for adequately addressing environmentally sound development and for

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securing democracy in Latin America (§§ 2 and 5-7). Last but not least, the Brasilia Declaration expressed concern at the threat and risks of weapons of mass destruction owned by some countries and their tests and experiments (§ 13), and called for intensified international cooperation for environmental protection (§§ 10 and 14).

12. The Brasilia Declaration was complemented by the 1990 Action Plan for the Environment in Latin America and the Caribbean, adopted at the VII Ministerial Meeting on the Environment in Latin America and the Caribbean of October 1990. The Action Plan, recalling the Brasilia Declaration, insisted on the "inseparable linkage" between environmental concerns and the development model (§§ 3-4 of "Call to Action"). The final report of VII Ministerial Meeting warned that priorities varied in different regions: while the greenhouse effect and ozone layer depletion were "great concerns in the industrialized world", "the top environmental priority in Latin America and the Caribbean was to alleviate poverty" (§ 20.5); priority should be given to "the structural problems caused by poverty, unfair international economic conditions and the external debt" (§ 10).

13. The 1990 Action Plan began by insisting that in Latin America and the Caribbean a prerequisite of sustainable development was the solution to the problems of poverty, the foreign debt, fairer international pricing for its natural resources; in sum, environmental protection was an integral part of the economic, social and cultural development of Latin America and the Caribbean (§§ 10, 12, 15-16 and 23). Next, the Action Plan identified, as the main problems of the region, the *urban concentration of the population* and the mushrooming of *unplanned human settlements*, the generation of considerable amounts of *wastes* and the *impact on public health* (§ 24).

14. The Action Plan for the Environment then turned to other problems, which could be summarized under three main headings, namely: *resource management* problems (deforestation, soil loss and degradation, marine and coastal resources deterioration, and water resources deterioration); *environmental quality* problems (the urban problem, environmental impacts of mining activities, energy issues, extinction of native and folk cultures, illegal drug-crop cultivation); and *global environmental* problems (climate change, ozone layer depletion, loss of biodiversity, transboundary hazardous wastes) (§§ 24-41). The current international agenda, by focussing largely on these latter, did not exactly reflect all the main current Latin American and Caribbean priorities.

15. Nevertheless, it was undeniable that developments since the 1972 Stockholm Declaration had awaken awareness, stimulated national legislation and institutions and fostered international/regional/subregional cooperation in relation to the environment (§ 42). Suffice it here to recall, e.g., the establishment in 1989 of the environmental policy of the 1978 Treaty for Amazonian Cooperation and, in the framework of that Treaty, of a Special Commission for the Amazonian Environment - CEMAA (§ 43). On the other hand, obstacles to environmental

management in Latin America and the Caribbean remained, namely: insufficient funding and co-ordination, insufficient environmental assessment of development projects, insufficient and unstructured environmental information, insufficient research on environmental problems, absence of environmental education, impact of the economic crisis, predominance of destructive technologies, insufficient consideration to the "limited and exhaustible nature" of environmental resources, use of environmental conditionalities by industrialized countries "to block access of the region's exports to their markets" (§ 48).

16. The strategy of the Action Plan encompassed the priority to be accorded to *preventive* environmental protection activities in the region, and the promotion of greater citizen awareness and participation in solving environmental problems (§ 55). The document ended with a "Call to Action", which, besides reasserting the links between environmental concerns and the development model (§§ 3-4), urged the States of the region to achieve "regional unity and action" in preparation of UNCED and at UNCED-92 (§ 5 and 8), and to hold widespread consultations and peoples' participation (§ 9). In sum, the Action Plan, together with the Declaration of Brasilia, represent the general framework for environmental management in Latin America and the Caribbean at the current stage of preparations for UNCED-92.

17. Moving from considerations of principle (*supra*) to a closer identification of regional priority areas, the Latin American and Caribbean countries went further in the Tratelolco Platform on Environment and Development adopted by the Ministerial Meeting of Latin American and Caribbean countries, at Mexico City in March 1991, at the end of the Regional Preparatory Meeting (of the PrepCom) for UNCED-92. The Tlatelolco Platform in fact represents the joint strategy of the Latin American and Caribbean countries for UNCED-92. The 1991 Tlatelolco Platform as well acknowledged the link between poverty and environmental degradation (§§ 18 and 24(g)) and the link between such degradation and unsustainable development models (§§ 2, 4, 6 and 9); it called for the incorporation of the "environmental dimension" as a basic component of the process of sustainable and equitable development (§§ 23 and 13) and then drew attention to the related relevance of observance of human rights. In that respect, the Tlatelolco Platform emphasized the region's "significant achievements in strengthening democratic processes, preserving peace and promoting respect for human rights" (§ 3), as well as the need to secure "access to decent living conditions, adequate levels of social organization and political representation and the genuine participation of the population in the definition of its own development" (§ 18). The Tlatelolco Platform insisted on "the essential need for the active commitment of all sectors of society in order to promote environmental protection and enhancement and sustainable development" (§ 21).

18. The Tlatelolco Platform then turned to the identification of priority concerns of the countries of the region calling for their joint action for UNCED-92

(§§ 24-25). According to the document, the following environmental topics were "of fundamental importance" for the Latin American and Caribbean countries:

1) *protection of the atmosphere and climate change*: the negotiation of a framework Convention on the matter to be adopted at UNCED-92, besides acknowledging the primary responsibility of developed countries, must also recognize the need for developing countries to use their natural resources in an environmentally sustainable manner; the region must aim at finding substitutes for ozone-depleting substances;

2) *biodiversity and biotechnology*: the knowledge and preservation of biodiversity were of great importance to the region, and biotechnological advances and the economic potential for the exploitation of biodiversity made it necessary to conclude an international agreement on the matter; such an agreement on conservation of biological diversity must include obligations for the conservation of biodiversity and benefits and obligations relating to biotechnology;

3) *protection and management of land resources*: problems of deforestation, desertification and drought required "integrated measures" which, while recognizing national sovereignty over natural resources, reversed those processes and guaranteed the conservation and management of ecosystems; forestry management was a priority objective of activities to prevent deforestation;

4) *soil degradation* (acidification, erosion and salinization): this is a problem which to some extent affects all countries in Latin American and the Caribbean, as a result of unsuitable rural and agricultural development patterns; support for the countries of the region to prevent and combat soil degradation is thus a priority in international action;

5) *protection and management of oceans, seas and coastal areas*: there is need to strengthen regional cooperation programmes such as the Greater Caribbean and South-East Pacific Regional Seas Programmes and the South Atlantic Programme; given the wide variety of marine, coastal and ocean resources (that can be used for the benefit of the population), there is need to draw up an inventory of those resources, to establish "special areas" on the basis of the characteristics of those resources, and to foster the relations between regional and subregional programmes and institutions (e.g., for exchange of information);

6) *protection of freshwater quality and supply*: this is vital for the countries of the region; there is need to formulate regional strategies and programmes for the conservation and integrated development of water resources, and to formulate research and monitoring programmes to abate or eliminate the pollution of freshwater resources;

7) *eradication of poverty in human settlements*: there is need to recover the rate of growth, embark on structural reforms and alter economic and social policies, and to give priority to the supply of appropriate health and education services and to the improvement of housing and allied services in urban and rural areas; there is

also need for further international cooperation in distinct areas (e.g., trade, external debt, transfer of technology, additionality of financial resources) to eradicate poverty;

8) *urban development and the environment*: there is urgent need to raise the standard and quality of life, with new financial mechanisms to tackle the problems of housing, sanitary conditions (drinking water supply and sewerage systems), waste disposal, and air pollution;

9) *environmental management of wastes (particularly toxic or hazardous wastes)*: there is a priority need to pursue a regional follow-up machinery complementing the Basel Convention (e.g., procedures on liability and compensation for damage resulting from the transboundary movement and disposal of hazardous wastes); there is need to set up a mechanism to prohibit hazardous or harmful substances, products, processes and technologies prohibited in the countries of origin being marketed or exported to developing countries.

19. Another document illustrative of Latin American perceptions and priorities in the field of environmental law was the 1990 report "*Our Own Agenda*", prepared by the Latin American and Caribbean Commission on Development and Environment. This report, a sort of Latin American and Caribbean version of the 1987 report of the Brundtland Commission, purported to develop a regional outlook of the issue of the environment prior to UNCED-92. The present report drew attention to the relevance to that central issue of securing respect for human rights. The report stated categorically that "to speak of human rights (including the right to eat, to housing, to education, to health, and to income), of the environment, or of support for democracy and cultural diversity is infinitely more logical from the human perspective" (p. 11). The report *"Our Own Agenda"* next warned in this connection that "our region has experienced a democratization process that should be sustained. The broad participation of civilian society is essential if we are to achieve development with equity" (p. IX). Sustainable development will thus not be possible without real democracy: it will be "impossible to break down the barriers that stand in the way of economic, social and ecologically viable development" without a "democracy that permits greater participation by society" (p. 45). Achievement of sustainable development should be "the joint responsibility of State and Society", what presupposed the existence of a well-informed society, a social mobilization on behalf of sustainable development, and "the citizens' ability to control the State"; a participating democracy was characterized by "a proliferation of organizations which serve as intermediaries between the State and society" (pp. 72-75).

20. The regional Latin American and Caribbean report went on to identify distinct ways to strengthen the constitutional State, namely: first, the development of adequate environmental legislation (with corrective as well as — and mainly — preventive measures, also requiring environmental impact studies); second, the introduction of reforms that made "the judicial power truly autonomous"; and third,

the establishment of the basis for "a legal system that protects the citizens against abusive exercises of power" (pp. 78-79). Significantly, the report *"Our Own Agenda"* emphasized that the central objective of the new strategy to stimulate sustainable development pursuant to such regional outlook "can be none other than the improvement of the quality of life of the population. If we are to improve the quality of life, we must, first and foremost, face up to the abject poverty which currently affects the bulk of the population. We cannot talk of improving the environment as long as such a sizeable segment of our people lives in conditions of extreme poverty" (p. 45). In sum, the fundamental aim of the new economic and social strategy was "to enhance the well-being of most of the population to the fullest", in conformity with the "objectives of sustainable development", leading necessarily to a "more egalitarian society" (p. 68). The regional report thus clearly stressed the link between pursuance of ecologically sustainable development and enhancement of human rights, in particular economic and social rights.

21. The present report singled out some topics of priority concern for Latin American and Caribbean countries. It emphasized, e.g., *urban poverty* — the environmental problems of human settlements — as an integral part of the industrial environment of Latin America: the disorganized urbanization with insufficient capital, with belts of poverty surrounding big Latin American cities in totally degraded social and physical settings, called for the need to disperse population in medium-sized cities, to disperse economic activity with modern and decentralized government (pp. IX, 62, 24 and 11). The highest concerns here were with the elimination of extreme poverty and the rational use of natural resources, in sum, the improvement of the quality of life of the population in endeavouring to achieve a more egalitarian society (pp. 45, 47 and 68). Related to this was the issue of *land use or management* (pp. 19, 62 and 82), to which the report ascribed particular importance and the "best possibilities" for the region. Other regional priorities foreseen were the issues of *water resource* (pp. IX, 25-26 and 59), *energy* (pp. IX, 30 and 59-60), *biodiversity* (pp. IX-X, 14, 26, 53 and 56-57), *forestry* (pp. 15-16 and 28-29), *air pollution* (pp. 7, 23 and 40), *cultural heritage* (pp. VIII, 14 and 46). The report further referred to the issues of *disarmament and the threat of nuclear weapons* (pp. VII, 35 and 83), of *wastes* (pp. IX and 23), and the problems of *debt* (pp. VIII and 71-72) and of *drugs* (pp. 4 and 39).

22. May it be added that, within the inter-American system, initial efforts have been undertaken to identify priority environmental issues for the American States. The creation of an inter-American system for *nature conservation* was in the agenda of the OAS General Assembly, which instructed the OAS Permanent Council to establish a special working group to identify ways and means whereby the OAS could work more effectively for environmental protection (OAS, AG/RES.1050 (XX-0/90), of 1990). Furthermore, it addressed the issue of *new technologies* and the environment (OAS, OEA/Ser.P, AG/doc. 2777/91, rev. 1, of 1991). The Inter-American Development Bank (BID), on its turn, has turned its

attention more specifically to the way in which environmental management (current institutional and legal framework and role reserved to NGOs) is organized in Latin American and Caribbean countries which are BID borrowers, taking due account also of environmental legislation.

23. In BID's assessment, the main environmental problems faced by the countries of the region are *environmental deterioration in urbanized areas, poverty* (as related to environmental degradation), *deterioration of water resource, deforestation, destruction of biological diversity, deterioration of coastal resources, pollution from agro-chemicals, deterioration of natural and cultural heritage* (of Amerindian communities), and *institutional shortcomings* (inadequate environmental legislation and management). BID has drawn attention to the fact that the specific environmental problems of Latin American and Caribbean countries "have mainly to do" with "major changes" having repercussions on their natural resources over time.

24. A final observation remains to be made, on the interrelationship or complementarity of international environmental instruments at global and regional levels when they address the same issues. The elaboration and adoption, by the U.N. General Assembly, of the 1982 World Charter for Nature, for example, discloses a wide consensus on some basic principles, by developing as well as developed countries. On the basis of surveys of national environmental legislation and management by U.N. specialized agencies such as WHO and FAO, ten areas or sectors have been identified as being of priority to most developing countries, namely: *land use and soil conservation, water resource, forestry, marine resources and coastal areas, air quality, wildlife and protected natural areas, sanitation and waste management, hazardous substances, working environment* (occupational health and safety) and *pollution sources* (e.g., energy production, exploitation of resources, and wastes of various kinds). It is not surprising that such priority concerns correspond, by and large, to those of Latin American and Caribbean countries.

25. The 1981 UNEP Montevideo Programme for the Development and Periodic Review of Environmental Law listed, alongside with global environmental issues, some topics which also correspond to Latin American and Caribbean priority concerns, namely, soil conservation, coastal zone management, air pollution, rivers' and inland waters' pollution, environmental impact assessment. In the recent Review Conference of the 1981 Montevideo Programme, held a few days ago in Rio de Janeiro (October 30 to November 02, 1991), those topics were retained in the Programme, added to new areas, one of which is also of crucial importance to Latin American countries, namely, the environmental problems of urbanization. Last but not least, it should not pass unnoticed that regional endeavours will necessarily have to count on corresponding legislative and administrative provisions at the national level (as the experience of the UNEP Regional Seas Programme clearly demonstrates), — whether environmental statutes

pertain to anti-pollution law, or to environment and natural resources law, or else to environmental framework law.

26. The above-surveyed are, in my opinion, from the standpoint of international environmental law, the principal environmental issues concerning the American States nowadays, which the OAS Inter-American Juridical Committee may wish to take into account and develop in its forthcoming legal study on the "efforts to establish a body of environmental law in the Americas".-

Brasilia, 06 Nov. 1991.

A. A. C. T.

- X -

A CALL: "ENVIRONMENT AS A HUMAN RIGHTS ISSUE"(*), FROM THE ORGANIZING COMMITTEE OF THE DECADE OF HUMAN RIGHTS EDUCATION

Throughout the world, environment is addressed as one of the most serious public issues. Concerns about the Environment are at the focal point of debate and activities of numerous grassroots organizations worldwide. Be it industrial hazards, pesticides, toxic waste, nuclear garbage, deforestation, hydro-eletric projects, birth-control devices, acid rain, etc., groups and individuals are working to reverse and/or stop governments and industries from violating humanity's human right to a healthy environment.

The relationship between the infliction of environmental harms and the violation of human rights has been repeatedly demonstrated and documented in development experience. Activities that produce serious environmental degradation inevitably produce serious harms to some groups of people; when there are no protections against these human harms, and when they go unredressed, basic human rights are violated.

Development projects which impose fundamental changes in/on ecologies destroy resources which are essential to the livelihood, well-being and often the cultures of distinct groups of people. Besides development projects, negligence and lack of corporate responsibility on the part of multinationals, particularly in the

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(*) Message to the Inter-American Seminar on Human Rights and the Environment:

New York, 30 January 1992

Dear Professor Cançado Trindade,

(...) The Organizing Committee of the Decade of Human Rights Education will appreciate it very much if you could present the enclosed "Call" at the Seminar, in our behalf.

I believe that this Seminar is an important event at which time we can take a major step towards promoting environment as a human rights issue. This will contribute to developing a more comprehensive understanding of human rights as a holistic paradigm. Please give my personal regards to the participants.

Sincerely,

Shulamith Koenig
Executive Director, Organizing Committee
Decade of Human Rights Education.

developing world, has also contributed to environmental destruction and loss of lives.

The only way to prevent violations is to empower people. Experience from all over the world demonstrates that environmental laws may never protect people from environmental harms unless people enjoy rights to participate in the process of enforcing these laws. Excluding affected people from the enforcement of environmental standards is a clear violation of human rights which leads inevitably to other violations of human rights.

The Organizing Committee of the Decade of Human Rights Education is working to link the various social justice issues by promoting a holistic approach to human rights. We believe that the holistic approach is crucial to the development of a human rights way of life, where policy makers decisions about the environment grow out of a commitment to promote and protect human rights.

Understanding environment as a human rights issue will complement and reinforce the exercise of other fundamental human rights such as the right to citizen participation, the right to be informed of government decisions, gender equality etc.

Rights to a healthy and supportive environment are often considered as aspirational with no legal entitlements attached to them. Conditional legal remedies and entitlements need to be drafted in order to give government platitudes more teeth and to ensure their enforcement as human rights. Moreover these entitlements should not be restricted to the protection of the environment but should include plans for promoting restoration as a human rights concern.

- XI -

PRONUNCIAMIENTO DEL I CONGRESO INDÍGENA INTERAMERICANO DE RECURSOS NATURALES Y MEDIO AMBIENTE (COMISIÓN III)
(Ciudad de Panamá, 6-11 de noviembre de 1989)

(Excerptas)

Nosotros, los representantes de treintidos naciones indígenas de diecisiete paises del continente americano, reunidos en la Ciudad de Panamá, en ocasión del Primer Congreso Indígena Interamericano sobre la Conservación de Recursos Naturales y Medio Ambiente, hacemos el pronunciamiento siguiente.

Considerando (...)

5. Que es necesario resolver nuestra situación problemática y continuar la lucha por nuestras reivindicaciones, siendo asunto fundamental la propiedad y derecho de usufructuo de la tierra y sus recursos, así como el respeto a nuestras culturas. (...)

7. Que la crisis ambiental por la que atravieza el mundo es el resultado del proceso de explotación irracional de recursos por parte de intereses económicos locales y hegemónicos transnacionales, siendo esto una agresión que atenta contra la posibilidad de una vida digna de los pueblos indígenas, debiendo ser por esto, un componente básico de la lucha indígena.

Declaramos (...)

2. Que, es necesario lograr la reivindicación histórica del derecho de los pueblos indígenas a su patrimonio natural y cultural, no como una concesión de los gobiernos sino como el reconocimiento del derecho real que poseen los primeros pobladores milenarios del continente americano.

3. Que, los Estados actuales deben de reconocer el hecho histórico de que los pueblos indígenas son naciones que poseen su propia lengua, su propia cultura, su propia religión, su propia tradición, su propia organización sociopolítica y su propio territorio; y que, por lo tanto, los Estados deben de reconocer su carácter multinacional, pluricultural y plurilinguístico.

4. Que, el reconocimiento del patrimonio natural y cultural de los pueblos indígenas debe ser legal e integral. Debe incorporarse al marco legal y constitucional de los Estados y debe incluír todos los componentes naturales, sociales y culturales que conforman la base de la vida humana. Debe incluír los

recursos naturales renovables y no-renovables; del suelo y del subsuelo; terrestres y acuaticos; e incluso el espacio aéreo. Debe considerar el medio ambiente como un ámbito natural, sociopolítico y cultural.

5. Que, en reconocimiento del derecho de los pueblos indígenas a la autodeterminación, es de vital importancia la participación de los mismos en todas las acciones gubernamentales y no-gubernamentales que afectan de alguna forma los patrimonios naturales y culturales que existen dentro de sus territorios. Así, los proyectos de desarrollo deben de contar con la participación efectiva de los pueblos indígenas en todas suas etapas: planificación, decisión, ejecución, evaluación y reformulación. (...)

- XII -

PRONUNCIAMIENTO DEL II CONGRESO INDÍGENA INTERAMERICANO DE RECURSOS NATURALES Y MEDIO AMBIENTE (GRUPO 5)
(San Ignacio de Moxos, Bolivia, 2-8 de diciembre de 1991)

(Excerptas)

Considerando (...)

3. Que los recursos naturales y el medio ambiente están en un avanzado proceso de destrucción por parte de empresas privadas, nacionales e internacionales, y estatales.

4. Que los territorios que por derecho histórico mayor han pertenecido y pertenecen a los pueblos originarios, han sido invadidos y arrebatados causando la destrucción, miseria y muerte de sus habitantes. (...)

6. Que el desarrollismo ha atropellado a los pueblos originarios en sus costumbres, creencias, lengua y tradiciones.

7. Que los recursos naturales y medio ambiente están regulados en su manejo por normas legales que no son acordes con la política que promueven los pueblos originarios.

Resuelven:

Preámbulo

Que para el desarrollo de la plataforma de los derechos y garantias fundamentales de los pueblos originarios de América se debe tomar en cuenta la concepción filosófica de los mismos, al asumirse no como amos y patronos de la naturaleza, sino como sus hijos. Ello obriga a no destruir a la madre tierra, ni explotarla, sino aprovecharla armónica y racionalmente bajo sistemas de trabajo solidarios y comunitarios. (...)

III. Establecimiento del derecho de los pueblos a disponer de los medios materiales y culturales necesarios para su reproducción y crecimiento de manera especial a la conservación, recuperación y ampliación de las tierras y territorios que han ocupado tradicionalmente. Este derecho incluye la participación en los beneficios de la utilización de los recursos naturales que se encuentren en sus territorios y la conservación de las calidades del habitat. Deberá ser asegurado tanto dentro del régimen de propiedad individual y colectiva como mediante el desarrollo de nuevos sistemas normativos adecuados. (...)

V. Afianzamiento del derecho al ejercicio y desarrollo de las culturas originarias, a su crecimiento y transformación, y a la participación de los pueblos en la afirmación de un Estado pluricultural.

VI. Establecimiento de las condiciones jurídicas y sociales que garanticen los derechos políticos, económicos, sociales, históricos y culturales de los pueblos originarios. (...)

Integrantes:

Zacarias Jacinto, Inocente Peña, Jorge Nuyu Yaca, José Bailabas, Marcelino Morales, Andrés Lachagallu, Ruth Flores, Eladia Chavarria, José Manuel Pinto, Jaime Dirayu, Teodoro Malema, Angel Yampara, Rucardo Mendoza, Nicolás Torres, Emo Valeriano Thola, Vicente Choquetica y Fernando Untoja (Bolivia); José Carlos Morales (Costa Rica - IIDH); Andrès Cus Mucu y Miguel Zucuqui (Guatemala); Arturo Argueta (México); Harold Dirickson (Canadá).

Observadores:

Kitula Liberman (Bolivia); Alberto Espina (Colombia); Martin Laurent Dockler (Canadá).

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RELACIONES ENTRE EL DESARROLLO SUSTENTABLE Y LOS DERECHOS ECONOMICOS, SOCIALES Y CULTURALES: DESARROLLOS RECIENTES*

Antônio Augusto Cançado Trindade

1. INTRODUCCIÓN

En años recientes el análisis de los temas de desarrollo y medio ambiente se ha centrado en la erradicación de la pobreza y la satisfacción de las necesidades básicas del ser humano[1]. Aceptado por algunos como un principio del derecho internacional contemporáneo[2], se ha llegado a considerar que el desarrollo sustentable –uno de los ejes del informe de la Comisión Brundtland de 1987[3]– abarca el fomento del crecimiento económico, la erradicación de la pobreza y la satisfacción de las necesidades básicas del ser humano (v.g., las relacionadas con la salud, la nutrición, la vivienda, la educación)[4]. El análisis de los temas de desarrollo y medio ambiente se ha abocado al mejoramiento de las condiciones de vida económicas y sociales[5]. Asimismo, el desarrollo sustentable se ha llegado a percibir como un vínculo entre el derecho a un medio ambiente saludable y el derecho al desarrollo[6].

No requiere de demostración la estrecha relación que existe entre el desarrollo [socioeconómico] y los derechos humanos y, en particular, los vínculos entre el desarrollo y algunos de los derechos económicos y sociales consagrados en tratados de derechos humanos como el Pacto Internacional de Derechos Económicos, Sociales y Culturales de Naciones Unidas (1966), el Protocolo Adicional a la Convención Americana sobre Derechos Humanos en Materia de Derechos Económicos, Sociales y Culturales (1988) y la Carta Africana de Derechos Humanos y de los Pueblos (1981)[7]. Pero un tema que parece requerir de un análisis más profundo en la actualidad es la relación entre el desarrollo sustentable y los derechos económicos, sociales y culturales, tomando en cuenta las tendencias recientes, tales como los resultados de la Conferencia sobre el Medio Ambiente y el Desarrollo que tuvo lugar en Río de Janeiro en 1992. De hecho, los documentos generados tanto por la Conferencia de Río de 1992 como por la Conferencia Mundial de Derechos Humanos de Naciones Unidas de 1993 contienen elementos importantes relacionados con este tema, los cuales pasaremos a considerar a continuación.

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* Ponencia presentada por el Autor ante la Conferencia de Derecho Internacional de Qatar (Organizada por el Secretario de Naciones Unidas y el Comité Jurídico Consultivo Africano-Asiático), en Doha, Qatar, el 25 de marzo de 1994.

2. LA CONFERENCIA DE RÍO DE 1992

La Agenda 21 adoptada por la Conferencia de las Naciones Unidas sobre el Medio Ambiente y el Desarrollo de 1992 hace mención expresa de los **grupos vulnerables** (cita como ejemplos los pobres en las zonas urbanas y rurales, las poblaciones indígenas, los niños, las mujeres, los ancianos, los desprovistos de hogar, los que padecen de enfermedades terminales y los discapacitados)[8]. Su preocupación principal es la satisfacción de las **necesidades básicas** del ser humano[9] -la alimentación, la preservación de la salud, una vivienda adecuada, la educación. De modo significativo, la Agenda 21 hace referencia específica a dos instrumentos de derechos humanos- la Declaración Universal de Derechos Humanos y el Pacto Internacional de Derechos Económicos, Sociales y Culturales de Naciones Unidas -al abordar el tema del derecho a una vivienda adecuada: se advierte en el sentido de que, si bien este derecho está contemplado en los dos instrumentos ya señalados, se estima que en la actualidad por lo menos 1.000 millones de personas no tienen acceso a una vivienda adecuada o segura y que, de persistir la presente situación, este total aumentará dramáticamente para fines de este siglo[10].

La injusticia perpetrada por las serias disparidades en las **condiciones de vida** entre los seres humanos y las naciones se refleja en, y se agrava por, la degradación ambiental[11]. Del mismo modo, es evidente que la degradación ambiental puede plantear cuestiones de derechos humanos, v.g., de acuerdo con las disposiciones pertinentes del Pacto Internacional de Derechos Económicos, Sociales y Culturales de Naciones Unidas, especialmente en relación con los grupos vulnerables. Pero además de éstos, un número importante y alarmante de personas vive hoy día en condiciones de extrema vulnerabilidad como consecuencia del fenómeno del empobrecimiento generalizado, el cual parece haberse agravado desde principios de los años ochenta. Aparte de la Agenda 21 de la CNUMAD, el PNUD también advierte que más de 1.000 millones de personas siguen viviendo -o sobreviviendo- en condiciones de pobreza absoluta[12].

En el caso de América Latina, por ejemplo, la Comisión Económica para América Latina y el Caribe (CEPAL) calculó que a principios de los años noventa 196 millones de personas vivían en la pobreza (de las cuales 93.5 millones vivían en la pobreza absoluta), 60 millones más que al principio de la década de los ochenta[13]. Las dimensiones del problema son virtualmente inmensurables: un estudio realizado por la UNESCO sobre la erradicación de la pobreza en América Latina señala que, "la pobreza crítica tiene además una dimensión cultural que no se puede medir", dada la pérdida del sentido de la dignidad y de pertenecer a una comunidad, del respeto por sí mismo y de un sistema de valores. Como consecuencia, se da un aumento en la violencia y una distorsión de los sistemas educativos, fomentando prejuicios contra los sectores pobres de la sociedad[14].

No debe pasar desapercibido el hecho de que el Comité de Derechos Económicos, Sociales y Culturales de Naciones Unidas, en sus directrices revisadas (1991) relacionadas con la forma y contenido de los informes que deben presentar los Estados Partes

de acuerdo con el Pacto Internacional de Derechos Económicos, Sociales y Culturales de Naciones Unidas, haya insistido en la presentación de información sobre la realización de ciertos derechos para la sociedad entera, y además para grupos específicos (socioeconómicos, culturales y otros), particularmente los grupos más vulnerables[15]. Dado el actual agravamiento en el triste fenómeno del empobrecimiento generalizado, la atención debe centrarse en la situación de grandes sectores de la población que quedan excluidos injustamente de los beneficios del así-llamado "crecimiento" y "modernización"[16]. Esta cuestión se relaciona directamente, y al mismo tiempo, con el desarrollo sustentable y la observancia de los derechos económicos, sociales y culturales. En vista del deterioro en las condiciones de vida de esos sectores de la población, es esencial que los sistemas internacionales de protección -del medio ambiente y no sólo de los derechos humanos- aborden el problema de la satisfacción de sus necesidades básicas como seres humanos.

En lo que respecta a los primeros, la Agenda 21 es categórica al afirmar que la pobreza y la degradación del medio ambiente están estrechamente interrelacionadas y que las modalidades insostenibles de consumo y producción (un tema muy sensible del desarrollo sustentable) agravan la pobreza y los desequilibrios (capítulo 4, punto 4.3)[17]. En su capítulo 3, dedicado exclusivamente a la "Lucha contra la pobreza", la Agenda 21, después de afirmar que la pobreza es un "problema complejo y multidimensional" sin ninguna solución uniforme aplicable a nivel mundial y que, por lo tanto, requiere de programas adecuados a cada país, recomienda una estrategia para erradicar la pobreza centrada en los recursos, la producción, cuestiones demográficas, servicios de salud y educación, los derechos de la mujer, el papel de los jóvenes y las poblaciones indígenas, y el proceso de participación democrática ligado al mejoramiento de la gobernabilidad[18].

A este respecto la Agenda 21 pone énfasis, en suma, en la satisfacción de las **necesidades humanas básicas**, con atención especial en la protección de los grupos vulnerables y los sectores más pobres de la población como medida indis-pensable para alcanzar el desarrollo sustentable[19]. La Agenda 21 expresa la esperanza de que mediante la integración de los temas del medio ambiente y del desarrollo se logre una "parcería mundial" para satisfacer las necesidades básicas del ser humano, conseguir una mejor protección y gestión de los ecosistemas, y elevar el nivel de vida de todos[20]. A su vez, la Convención-Marco sobre Cambio Climático y la Convención sobre Diversidad Biológica (1992) hacen referencia específica, en sus respectivos preámbulos, a la meta fundamental y urgente de erradicar la pobreza: la primera la relaciona con las "necesidades prioritarias legítimas de los países en desarrollo", mientras que la segunda la considera, junto con el desarrollo económico y social, como una de las "prioridades básicas y fundamentales de los países en desarrollo". A su vez, la Declaración de Principios sobre Forestas, adoptada también por la Conferencia de Río de 1992, conclama a la erradicación de la pobreza y la satisfacción de las "necesidades (humanas) sociales, económicas, ecológicas, culturales y espirituales de las generaciones presentes y futuras"[21].

Tanto la Declaración de Río como la Agenda 21 adoptada por la CNUMAD el 14 de junio de 1992 están impregnadas de manera significativa de elementos propios del universo conceptual de los derechos humanos que hoy día son comunes a ambas esferas de la protección (la del ser humano y la del medio ambiente). Por su parte, la Declaración sobre el Medio Ambiente y el Desarrollo, en su Principio 1, coloca a los seres humanos en el centro de las preocupaciones relacionadas con el desarrollo sustentable y afirma su derecho a una vida saludable y productiva en armonía con la naturaleza. El Principio 3 agrega que el derecho al desarrollo debe ejercerse en forma tal que responda equitativamente a las necesidades de las generaciones presentes y futuras. El Principio 5 se centra en la erradicación de la pobreza como una tarea esencial de todos los Estados y pueblos y un requisito indispensable del desarrollo sustentable y del mejoramiento del nivel de vida de la mayoría de los pueblos del mundo. A su vez, el Principio 10 destaca la importancia del derecho a la información, el derecho a la participación y el derecho a recursos jurisdiccionales internos efectivos[22].

La Declaración de Río de 1992 dedica especial atención al derecho a la participación (en el manejo del medio ambiente y en la promoción del desarrollo sustentable), destacando el papel de la mujer (Principio 20), de los jóvenes (Principio 21), de los pueblos indígenas y otras comunidades locales (Principio 22), respectivamente. El ejercicio de este derecho a la participación es objeto de un análisis minucioso por parte de la Agenda 21 y del Programa de Acción abre espacios para el papel de la mujer (capítulo 24), los niños y jóvenes (capítulo 25), los pueblos indígenas y sus comunidades (capítulo 26), y las organizaciones no gubernamentales (capítulo 27). La Agenda 21 también aborda el tema del fortalecimiento del papel de los trabajadores y sus sindicatos, del sector empresarial y la industria, los agricultores y la comunidad científica y tecnológica (capítulos 29-32). El capítulo 23 recalca el hecho de que la participación de ""todos los grupos sociales", a fin de lograr una "auténtica participación social" en apoyo de iniciativas comunes en favor del desarrollo sustentable, tendrá una importancia decisiva en el cumplimiento efectivo de las áreas de programas de la Agenda 21[23]. Agrega que "uno de los requisitos fundamentales para alcanzar el desarrollo sustentable es la amplia participación de la opinión pública en la toma de decisiones"[24].

La Agenda 21 pone énfasis en la promoción de la educación y la conciencia del público (capítulo 36) como uno de los medios para su ejecución[25]. Indica, por ejemplo, que la [para ese entonces propuesta] Comisión sobre Desarrollo Sustentable (cf. *infra*) debería, a fin de "velar por el seguimiento eficaz" de la CNUMAD, *inter alia*, fomentar la participación de organizaciones no gubernamentales, promover el diálogo e intercambiar información con éstas (capítulo 38, párr. 11 y 13-14). Al pasar a considerar los problemas acuciantes de hoy y los desafíos del próximo siglo, la Agenda 21 apoya, en suma, en sus propias palabras, "la participación más amplia del público y la participación activa de las organizaciones no gubernamentales y de otros grupos" (capítulo 1, párrafo 3)[26].

La Comisión sobre Desarrollo Sustentable de las Naciones Unidas, creada recientemente[27] con el fin de asegurar el seguimiento institucional a la CNUMAD[28], en su

primera sesión sustantiva (celebrada en Nueva York del 14 al 24 de junio de 1993) aprobó un programa de trabajo temático multianual en el que se enumeran los siguientes "elementos críticos de la sostenibilidad": a) la cooperación internacional para agilizar el desarrollo sustentable en los países en desarrollo y políticas nacionales conexas; b) la lucha contra la pobreza; c) patrones de consumo cambiantes; y d) dinámica demográfica y sostenibilidad[29]. Al considerar los temas relacionados con el trabajo que estaba por emprender, la Comisión también consideró los siguientes tópicos: el intercambio de información sobre la instrumentalización de la Agenda 21 (a nivel nacional), los avances logrados con la incorporación de las recomendaciones de la CNUMAD en las actividades de organismos internacionales (y al interior del sistema de Naciones Unidas); los avances en la facilitación y promoción de la transferencia de tecnologías ambientalmente seguras, la cooperación y la formación de capacidades; y compromisos y flujos financieros iniciales y los mecanismos de aplicación para dar efecto a las decisiones tomadas por la CNUMAD[30].

3. LA CONFERENCIA DE VIENA DE 1993

A su vez, la Declaración y Programa de Acción de Viena, el principal documento adoptado por la II Conferencia Mundial de Derechos Humanos (Viena, junio de 1993), se refiere en forma expresa y repetida tanto al desarrollo sustentable como a los derechos económicos, sociales y culturales. La Declaración de Viena aborda el desarrollo sustentable en relación con diferentes aspectos del derecho internacional de derechos humanos, tales como: el fortalecimiento de las instituciones democráticas, en particular aquéllas relacionadas con la administración independiente de la justicia[31]; la adaptación constante de los mecanismos de las Naciones Unidas en el campo de los derechos humanos a las necesidades actuales y futuras de la protección (buscando especialmente mejorar su coordinación y eficiencia)[32]; la concertación internacional para asegurar el bienestar económico, social y cultural de las poblaciones indígenas fundamentada en la igualdad y la no discriminación, su participación total y libre en todos los aspectos de la sociedad y su disfrute de los beneficios del desarrollo sustentable[33]; y el pleno e igual disfrute por la mujer de todos los derechos humanos como cuestión prioritaria. Al destacar la importancia de la "integración y plena participación de la mujer como agente y beneficiaria del proceso de desarrollo", la Declaración de Viena reitera expresamente "los objetivos fijados sobre la adopción de medidas globales en favor de la mujer en la Declaración de Río sobre el Medio Ambiente y el Desarrollo y el capítulo 24 de la Agenda 21" aprobada por la CNUMAD en 1992[34].

Cierto es que en el pasado no se ha dado suficiente atención a la implementación de los derechos económicos, sociales y culturales. Por eso no es de sorprenderse que la reciente Declaración de Viena haya prestado especial atención a los mismos. La Declaración afirma categóricamente que "debe hacerse un esfuerzo concertado para garantizar el reconocimiento de los derechos económicos, sociales y culturales a niveles nacional, regional e internacional"[35]. La Declaración condena las constantes violaciones y los obstáculos al goce pleno de los derechos humanos en diferentes partes del mundo,

tales como, *inter alia*, "la pobreza, el hambre y otras denegaciones de los derechos económicos, sociales y culturales". Pide a los Estados que se abstengan de adoptar medidas unilaterales que impidan la plena realización de los derechos humanos, "en particular el derecho de toda persona a un nivel de vida adecuado para su salud y bienestar, incluidas la alimentación y atención de la salud, la vivienda y los servicios sociales necesarios"[36]. En particular, la Declaración exhorta a la comunidad internacional a que "haga cuanto pueda para aliviar la carga de la deuda externa de los países en desarrollo a fin de complementar los esfuerzos que despliegan los gobiernos de esos países para realizar plenamente los derechos económicos, sociales y culturales de sus pueblos"[37].

Pero la Declaración no se detiene ahí: indica "otros métodos" que habría que examinar en aras de fortalecer el disfrute de los derechos económicos, sociales y culturales, tales como "un sistema de indicadores para medir los avances hacia la realización de los derehos" enunciados en el Pacto Internacional de Derechos Económicos, Sociales y Culturales de Naciones Unidas[38]. Asimismo, la Declaración insta a la Comisión de Derechos Humanos de Naciones Unidas, en colaboración con el Comité de Derechos Económicos, Sociales y Culturales, a que "siga examinando la elaboración de protocolos facultativos" del Pacto Internacional de Derechos Económicos, Sociales y Culturales[39]. En la actualidad, el Comité de Derechos Económicos, Sociales y Culturales de Naciones Unidas analiza un proyecto de protocolo adicional que contempla la adopción de un sistema de peticiones o comunicaciones (sobre supuestas violaciones de los derechos humanos) dentro del marco del Pacto Internacional de Derechos Económicos, Sociales y Culturales, similar al que opera bajo el Protocolo Facultativo del otro Pacto Internacional (el de Derechos Civiles y Políticos).

4. OTRAS TENDENCIAS RECIENTES

a) La construcción conceptual del desarrollo humano

Desde hace cuatro años el Programa de Naciones Unidas para el Desarrollo (PNUD) viene desarrollando el concepto del desarrollo humano, el cual ha de vincularse con el derecho al desarrollo como un derecho humano. Muy significativo es el hecho de que, a cuatro años de la formulación de este derecho en la Declaración de 1986 de Naciones Unidas, el PNUD se haya abocado a una revaluación de las directrices de las tres "Décadas para el Desarrollo" anteriores de la ONU. El viraje decisivo se dio con el primer informe sobre desarrollo humano del PNUD, Desarrollo Humano: 1990. Después de poner en tela de juicio la conveniencia de usar indicadores estadísticos como el Producto Nacional Bruto (PNB) para medir el desarrollo adecuadamente, pasó a considerar otros aspectos mediante la adopción de otro índice llamado el Indice de Desarrollo Humano (IDH) compuesto de tres componentes claves -longevidad (esperanza de vida), conocimientos (educación) e ingresos (nivel de vida decente)- con el fin de proporcionar una medición más global del progreso humano[40].

El desarrollo humano se entendió originalmente, entonces, como "un proceso en el cual se amplían las opciones del ser humano" con el fin de lograr una vida prolongada

y saludable, la adquisición de conocimientos y acceso a los recursos necesarios para lograr un nivel de vida decente[41]. En su informe para 1990, el PNUD advirtió que, dada la grave amenaza que representaba la pobreza, el concepto de desarrollo sustentable - al ser "mucho más amplio que el de la protección de los recursos naturales y del medio ambiente físico" - además debería incluir el "desarrollo humano futuro"[42]. Pronto quedó claro que al nuevo índice IDH habría que agregar otros indicadores del progreso humano, tales como la libertad humana y los avances logrados en el ámbito cultural. Fue así como el segundo informe anual sobre desarrollo humano del PNUD (1991) propuso un nuevo índice de libertad política que permitiría la evaluación de la misma a la luz de los derechos humanos[43]. Los primeros dos informes sobre desarrollo humano, entonces, fijan como una prioridad la satisfacción de las necesidades humanas básicas como la nutrición, la vivienda, la atención médica básica y la educación, a las cuales agregan la libertad de expresión y acción. Entendido de esta manera, el desarrollo humano viene a ser un proceso mediante el cual se amplía la gama de oportunidades de los individuos, buscando una vida prolongada y saludable, con acceso a la educación y a los recursos necesarios para lograr un nivel de vida decente.

En síntesis, según esta conceptualización, el desarrollo humano busca ampliar la gama de opciones de las personas. Al integrar los indicadores de educación, salud e ingresos, el índice IDH constituye un nuevo criterio para la evaluación del progreso humano que nos permite medir el desarrollo de una manera tal que no se limita únicamente a la búsqueda del crecimiento económico; o sea, nos ofrece una medición mucho más comprensiva que simplemente el PIB (informe de 1990)[44]. Pasando al plano internacional, el tercer informe sobre desarrollo humano (1992) destaca la desigualdad agravada de las condiciones competitivas entre los países ricos y pobres en el mercado internacional. Por ende, plantea el establecimiento de una red de seguridad social para los necesitados y consultas globales tendientes a un nuevo "pacto internacional" sobre desarrollo humano, el cual colocaría al ser humano en primer lugar en las políticas nacionales y la cooperación internacional para el desarrollo[45]. En realidad, la perspectiva de los informes del PNUD, al igual que la Declaración sobre el Derecho al Desarrollo de Naciones Unidas de 1986, coloca el concepto del desarrollo humano en la esfera de los derechos humanos y enfatiza la interrelación entre los derechos políticos, económicos y sociales[46].

Este nuevo concepto de desarrollo humano tiene repercusiones directas en la protección ambiental. Tal y como se advierte en el informe del PNUD para 1992, la pobreza es una de las más serias amenazas contra la continuidad del entorno físico y la sostenibilidad de la vida humana. No es mera coincidencia el que la mayoría de los pobres vivan en las "áreas más vulnerables desde el punto de vista ecológico": el 80% de los pobres en América Latina, el 60% en Asia y el 50% en Africa viven en "tierras marginales" caracterizadas por una "baja productividad" y una "alta susceptibilidad a la degradación ambiental"[47]. El desarrollo sustentable implica un nuevo concepto que, además del crecimiento económico, abarca el acceso a la justicia y oportunidades para todos y toma en cuenta, aparte de la protección ambiental, la protección de la vida

humana y las opciones humanas, a fin de promover el desarrollo humano[48]. De modo significativo, el desarrollo sustentable resalta el hecho de que los temas sociales y ambientales no pueden separarse y, de hecho, deben ser abordados en forma conjunta.

Lo que es más, el concepto de desarrollo humano planteado por el PNUD se vincula directamente con el tema de la aplicación de los derechos humanos. Además de que no se limita a ciertos sectores sociales (tales como la educación y la salud), el desarrollo humano apunta a la necesidad de desarrollar las capacidades humanas; la misma libertad –en una democracia– constituye un componente esencial del desarrollo humano. Según el PNUD, las fuentes de información no deben limitarse a los "aspectos negativos" (como violaciones de los derechos humanos), sino que deben incluir también las respuestas y logros de cada país en esta área. El desarrollo humano y la libertad y participación políticas están estrechamente interrelacionados, pero en este amplio enfoque debe considerarse igualmente la situación de los derechos económicos y sociales[49]. Este tema fue analizado por la Conferencia Mundial de Derechos Humanos de 1993 y durante su proceso preparatorio. La resultante Declaración y Programa de Acción de Viena, al señalar la necesidad de fortalecer la trilogía, democracia/desarrollo/ derechos humanos, exige la eliminación de la pobreza absoluta y la exclusión social como una alta prioridad. El agravamiento de la pobreza incide directa y negativamente en los derechos humanos, representa un estado de necesidad en que no existe la libertad y que en última instancia constituye una denegación de los derechos humanos en su conjunto.

El cuarto y más reciente informe sobre desarrollo humano del PNUD, el de 1993, advierte que "aunque en los tres últimos decenios ha habido logros importantes en cuanto al desarrollo humano, la realidad es que todavía sigue excluyéndose a mucha gente". Más de 1.000 millones de personas en todo el mundo siguen padeciendo la pobreza absoluta, y el 20% más pobre se encuentra con que el 20% más rico goza de un ingreso que es 150 veces superior al suyo[50]. A pesar de ello, sin embargo, "se entán abriendo ventanas nuevas de oportunidades": por ejemplo, dado que por primera vez desde la Segunda Guerra Mundial y gracias al fin de la guerra fría, el gasto militar global empieza a disminuir, la nueva motivación debe ser la reconstrucción de sociedades fundamentadas en las necesidades humanas reales y la lucha contra la "pobreza global", ya que "la pobreza en cualquier parte constituye una amenaza a la prosperidad en cualquier parte"[51]. No es de sorprenderse que el informe para 1993 se haya concentrado en la participación (a través de mercados, gobiernos y organizaciones comunitarias) como un elemento esencial del desarrollo humano; una vez más, "la pobreza constituye un enorme obstáculo a la participación, sea dentro o entre naciones"[52].

Si bien los informes anteriores del PNUD (1990-1992) se centraron en los componentes del desarrollo del pueblo (inversión en capacidades humanas) y a favor del pueblo (asegurar que el crecimiento económico se distribuya amplia y justamente), el último (el de 1993) se centra en el desarrollo por el pueblo (dar a todos la oportunidad de participar)[53]. Las consecuencias de colocar al público en el centro del cambio político

y económico -anticipando las preocupaciones de la próxima Cumbre Mundial sobre Desarrollo Social- son considerables y desafían los conceptos tradicionales: se pasa, por ejemplo, de la seguridad de las naciones a la seguridad de los pueblos (alimentación, empleo, medio ambiente seguro), de viejos modelos de desarrollo a nuevos modelos de desarrollo humano sustentable, de anticuados modos de cooperación internacional a nuevas formas de la misma centradas directamente en las necesidades del pueblo[54].

De la misma manera, debe colocarse un nuevo énfasis en la capacitación ("empowerment") del pueblo y el fortalecimiento de la democracia, (con la poca probabilidad de que se detenga en las fronteras nacionales)[55], factores que inciden directamente en la protección ambiental y de los derechos humanos y en el desarrollo sustentable. De hecho, las prácticas democráticas no pueden contenerse dentro de fron-teras nacionales; deben ser seguidas a nivel internacional por todos los países y organismos financieros internacionales, al asumir la responsabilidad de prevenir la recesión económica y el desempleo y su impacto negativo sobre los derechos económicos, sociales y culturales[56]. El desarrollo sustentable y la vigencia de los derechos humanos -en particular de los derechos económicos, sociales y culturales, los cuales en gran medida no recibieron suficiente atención en el pasado- deben perseguirse conjuntamente.

b) Grupos vulnerables: de la satisfacción de necesidades básicas a la capacitación ("empowerment")

La estrecha relación entre el desarrollo y los derechos humanos es demostrada por la realización no solamente de la mayoría de los derechos económicos, sociales y culturales, sino también, por ejemplo, por la del derecho fundamental a la vida (que abarca las condiciones de vida), para la cual se requiere que los Estados tomen medidas tanto negativas como positivas en favor de la preservación de la vida. En su dimensión más amplia, un derecho tan fundamental pertenece a la vez a dos esferas, la de los derechos políticos y civiles y la de los derechos económicos, sociales y culturales, demostrando así la indivisibilidad de todos los derechos humanos. Es un derecho intrínseco de todos los seres humanos y de los pueblos y se relaciona de esta manera con el derecho al desarrollo como un derecho humano. Una manifestación de estas articulaciones se encuentra en el concepto del desarrollo sustentable. Este último señala los que tienen especial necesidad de protección (mejores condiciones de vida) y las generaciones futuras; el proceso democrático, al asegurar la participación pública, se convierte en una condición indispensable para alcanzar el desarrollo sustentable.

No es de sorprenderse que, a partir de la CNUMAD, los países en desarrollo hayan intentado vincular sus compromisos en relación con temas globales con la meta de erradicar la pobreza. Tanto la Conferencia de Río de 1992 como la de Viena de 1993 tomaron en cuenta la situación de los grupos vulnerables que tienen especial necesidad de protección. Esto se refleja en pasajes pertinentes de documentos claves como la Agenda 21 (1992) y la Declaración y Programa de Acción de Viena (1993). Al concertar su atención en los grupos vulnerables (incluyendo los conformados por los sectores más pobres de la sociedad), su preocupación inmediata es la satisfacción de las necesidades

básicas de los seres humanos[57] y, a partir de ahí, la promoción de la capacitación ("empowerment") de las personas. Asimismo, no debe pasar desapercibido el hecho de que los derechos ya reconocidos de ciertas categorías de personas protegidas que pertenecen a los grupos vulnerables que tienen especial necesidad de protección (como, por ejemplo, los ancianos, las mujeres, los niños, los discapacitados, los trabajadores, los refugiados, los apátridas), deben abordarse en el entendido de que complementan los derechos consagrados en los tratados generales de derechos humanos, con el fin de lograr un mayor nivel de protección.

Podría afirmarse que, dado el fenómeno del agravamiento de la pobreza que en la actualidad afecta una proporción importante de la humanidad, hay que ir más allá de la satisfacción de necesidades básicas (especialmente en lo que a los más vulnerables o más marginados se refiere) y buscar nuevos modelos de desarrollo que favorezcan la reducción y erradicación de la pobreza y la consecución del desarrollo sustentable. La experiencia en lo que a la promoción y protección de los derechos humanos se refiere no se ha limitado, sin embargo, a la satisfacción de necesidades básicas. Como ya se ha indicado, ha ido mucho más lejos que eso, hacia la capacitación en los planos civil, político, económico, social y cultural. Además, la satisfacción de necesidades básicas no es una característica exclusiva del campo de los derechos humanos, sino que más bien común al desarrollo sustentable y a los derechos humanos. Y la agenda internacional de derechos humanos se ha expandido considerablemente (v.g., con la incorporación del derecho al desarrollo - *infra*) y por lo tanto se ha acercado mucho más a la del desarrollo sustentable. La erradicación de la pobreza extrema o absoluta es un imperativo tanto del desarrollo sustentable como de los derechos humanos.

Al convocar una Cumbre Mundial sobre el Desarrollo Social para marzo de 1995 en Copenhaguen, la Resolución 47/92 de diciembre de 1992 de la Asamblea General de Naciones Unidas identificó como los temas principales que deberían abordarse en la misma: el alivio y la reducción de la pobreza, la expansión del empleo productivo y el mejoramiento de la integración social (particularmente la de los grupos más marginados). Sus objetivos incluyen: colocar las necesidades humanas en el centro del desarrollo, identificar problemas comunes de los grupos desfavorecidos o marginados socialmente, movilizar recursos para el desarrollo social (a niveles local, nacional, regional e internacional) y asegurar el suministro más efectivo de servicios sociales para los más marginados. La recién concluida primera sesión del Comité Preparatorio de la Cumbre Mundial (Nueva York, enero 31 -febrero 11 de 1994) discutió los elementos que deberían incluirse en el proyecto de declaración y el programa de acción a ser adoptados en la Cumbre y señaló la importancia, en cuanto a una nueva agenda de desarrollo social se refiere, de reconocer que el centro de todo desarrollo debe ser el ser humano.

En vísperas de la Conferencia Internacional sobre Población y Desarrollo (Cairo, 1994), seguramente se abordará el problema de la persistencia de las graves disparidades en las condiciones de vida en diferentes partes del mundo[58], tomando en cuenta que "el enfoque de cualquier estrategia de desarrollo sustentable debe ser la persona humana"[59].

Un informe presentado recientemente a la Comisión de Derechos Humanos de Naciones Unidas destaca la "considerable complejidad y magnitud" de las tareas apremiantes de "monitorear la pobreza, desarrollar la noción de una línea de pobreza para diferentes países, producir perfiles de pobreza para más de cien países en desarrollo y delinear políticas exitosas contra la pobreza a partir de las que han fracasado"[60].

Desde una perspectiva histórica, vale la pena recordar que en la década de los sesenta se dio énfasis al desarrollo económico internacional a fin de superar el agravamiento de los desequilibrios y la alta concentración de ingresos. En los años setenta se dio prioridad a la satisfacción de las necesidades humanas básicas y la redistribución mediante el crecimiento económico. En los años ochenta se aumentaron las preocupaciones por los efectos del ajuste estructural sobre las necesidades sociales y las condiciones de vida. Ahora en la década de los noventa se perfila un consenso global sobre el alivio y la erradicación de la pobreza y el desarrollo humano sustentable[61]. De hecho, no hay duda de que la necesidad de mejorar las condiciones de vida de la población se ha convertido en la actualidad en un tema importante. El desarrollo debe abarcar la sostenibilidad ambiental, la equidad social y el fortalecimiento de instituciones democráticas (participación pública). Dentro de este marco, la reducción y erradicación de la pobreza es un reto de gran envergadura: la educación y el conocimiento -la capacitación de las personas- son claves para la persecución y consecución del desarrollo humano sustentable.

c) El reconocimiento y la cristalización del derecho al desarrollo como un derecho humano

Una tendencia reciente muy importante tiene que ver con el derecho al desarrollo como un derecho humano. La Carta Africana sobre los Derechos Humanos y de los Pueblos (1981) dispuso que todos los pueblos tienen derecho a su desarrollo económico, social y cultural (artículo 22). Por su parte, la Declaración sobre el Derecho al Desarrollo de 1986 de Naciones Unidas no sólo coloca a la persona humana como el "sujeto central del desarrollo"[62], sino también califica el derecho al desarrollo como un derecho humano inalienable de "todos los seres humanos y todos los pueblos"[63], en virtud del cual están "facultados para participar en, contribuir a, y disfrutar del desarrollo económico, social, cultural y político", en el que "puedan realizarse plenamente" todos los derechos humanos[64]. Más recientemente, tanto la Conferencia de Río de 1992 como la de Viena de 1993 han hecho aportes decisivos a la cristalización del derecho al desarrollo.

La Declaración sobre el Medio Ambiente y el Desarrollo (1992) es categórica al afirmar que "el derecho al desarrollo debe ejercerse en forma tal que responda equitativamente a las necesidades de desarrollo y ambientales de las generaciones presentes y futuras" (Principio 3). Asimismo, la aprobación de la inserción de la sección sobre el derecho al desarrollo como un derecho humano en la Declaración y Programa de Acción de Viena (1993) constituyó un avance importante en el ejercicio de la elaboración y adopción del documento. De modo significativo, la Declaración de Viena endosó (parte I, párrafos 10 - 11 y parte II, párrafo 72) las disposiciones claves de la

Declaración sobre el Derecho al Desarrollo de 1986. Además, advirtió (parte I) que la falta de desarrollo no podrá invocarse para justificar la privación de los derechos humanos internacionalmente reconocidos (párr. 10), y que "el derecho al desarrollo debe realizarse a fin de satisfacer equitativamente las necesidades ambientales y de desarrollo de las generaciones futuras" (párr. 11)[65]. Agregó (parte II) que deberían eliminarse todos los obstáculos a la realización del derecho al desarrollo (párr. 72).

A partir de la Declaración de 1986 de Naciones Unidas, quedó claro que los sujetos activos o beneficiarios del derecho al desarrollo son los seres humanos y los pueblos, y que los sujetos pasivos son los responsables de la realización de este derecho[66], con especial énfasis en las obligaciones adquiridas por los Estados en forma individual y colectiva. Las medidas previstas para esta realización abarcan tanto el plano nacional como el internacional[67]. La importancia de esta tendencia está en el reconocimiento o afirmación del derecho al desarrollo como un "derecho humano inalienable"[68]. Por lo tanto, su realización puede considerarse apropiadamente dentro del ámbito del derecho internacional de derechos humanos, ya que la Declaración de Naciones Unidas hace referencia en su preámbulo a los instrumentos pertinentes de Naciones Unidas y sus organismos especializados. Para la realización de este derecho se podría considerar la utilización de los mecanismos desarrollados en el campo de los derechos humanos, tales como, v.g., el sistema de informes, el monitoreo (por un grupo de trabajo o un relator especial) de situaciones que evidentemente resultan de la condición de subdesarrollo (que inciden directamente en la realización del derecho al desarrollo), la realización de estudios detallados (identificando problemas relacionados con ciertos derechos económicos y sociales, por ejemplo, los referidos a la salud, la vivienda, la educación)[69].

No hay duda de que en este momento (principios de 1994) se ha llegado a una etapa que va más allá de la simple formulación de este derecho. Al ser consagrado por la Declaración de Río sobre el Medio Ambiente y el Desarrollo de 1992 y por la Declaración y Programa de Acción de Viena de 1993, este derecho ha entrado en el campo del derecho internacional positivo de los derechos humanos. En todo caso, esto parece ser el significado de la Decisión 48/141 del 20 de diciembre de 1993 de la Asamblea General de Naciones Unidas, mediante la cual se creó el puesto del Alto Comisionado para los Derechos Humanos. En su preámbulo, *inter alia*, se afirma que "el derecho al desarrollo es un derecho universal e inalienable que constituye parte fundamental de los derechos de la persona humana".

La Declaración sobre el Derecho al Desarrollo de 1986 de Naciones Unidas consideró oportuno resaltar que, a fin de promover el desarrollo, debería darse igual atención y urgente consideración a la realización de los derechos civiles, políticos, económicos, sociales y culturales (dada su indivisibilidad e interdependencia), y que la observancia de ciertos derechos humanos no justifica la denegación de otros. De la misma manera, todos los aspectos del derecho al desarrollo son indivisibles e interdependientes y cada uno de ellos debe ser interpretado en el contexto del conjunto de ellos (artículos 6(2), 9(1) y preámbulo). El reconocimiento del derecho al desarrollo como un derecho humano por

la Declaración de Naciones Unidas sólo viene a reforzar otros derechos humanos formulados con anterioridad. Además, ha contribuido a centrar la atención sobre la promoción y protección de los derechos que pertenecen, a la vez, a individuos y a colectividades humanas, así también como a la búsqueda prioritaria de soluciones a las violaciones generalizadas, manifiestas y flagrantes de los derechos humanos. La cristalización del derecho al desarrollo como un derecho humano se debe en gran medida a la perspectiva global perseguida por las Naciones Unidas, inspirada en los cambios fundamentales que se han dado en la así llamada sociedad internacional contemporánea (*inter alia*, la descolonización, la capacidad de destrucción masiva, el crecimiento demográfico, la sostenibilidad ambiental, los patrones de producción y consumo, los imperativos de la equidad social y la readecuación del escenario mundial en la época después de la guerra fría)[70].

En el contexto de las iniciativas de desarrollo, el derecho al desarrollo refuerza los derechos existentes y considera que no se pueden invocar los supuestos requisitos del desarrollo material en un intento de justificar la imposición de restricciones al ejercicio de los derechos humanos garantizados. El propósito del derecho al desarrollo siempre era aumentar, y nunca restringir, los derechos preexistentes. Esto es así dada la naturaleza complementaria de todos los derechos humanos. De la misma manera, todos los aspectos del derecho al desarrollo son interdependientes y deben considerarse en el contexto del conjunto de ellos. Por lo tanto, cualquier denegación del derecho al desarrollo trae consigo consecuencias adversas para el ejercicio tanto de los derechos civiles y políticos, como de los derechos económicos, sociales y culturales. El reconocimiento y cristalización del derecho al desarrollo sólo pudo haberse emprendido a la luz de la unidad de concepción e indivisibilidad de los derechos humanos. El fenómeno que presenciamos en la actualidad no se trata de una sucesión imaginaria (generacional), sino más bien de una acumulación, expansión y fortalecimiento de derechos humanos ya reconocidos[71].

d) La vindicación de los derechos económicos, sociales y culturales

Falta por considerarse un último punto, a saber, las tendencias recientes en relación con la implementación internacional de los derechos económicos, sociales y culturales. La antigua dicotomía entre los derechos civiles y políticos y los derechos económicos, sociales y culturales fue superada hace ya mucho tiempo. La aceptación generalizada a partir de la I Conferencia Mundial de Derechos Humanos (Teherán 1968) de la doctrina de la indivisibilidad o interrelación de todos los derechos humanos desempeñó un papel decisivo en esta evolución. Fue esta nueva perspectiva global del tema la que estimuló, en años recientes, la búsqueda de una protección más efectiva de los derechos económicos, sociales y culturales, a los cuales no se había dado suficiente atención, en gran medida, en el pasado.

A nivel regional, en el continente africano la Carta Africana de Derechos Humanos y de los Pueblos de 1981 incluye estas dos amplias categorías de derechos, más los derechos de los pueblos, en un solo mecanismo de aplicación común (artículos 46-59 y

62). En el continente europeo, se consideró la posibilidad de incorporar algunos derechos económicos, sociales y culturales en la Convención Europea de Derechos Humanos hacia finales de los años setenta (recomendación 838 de 1978 de la Asamblea Parlamentaria del Consejo de Europa), pero una década más tarde prevaleció una solución distinta: la adopción del Primer Protocolo a la Carta Social Europea de 1987, mediante el cual se amplió el alcance de los derechos protegidos. Más recientemente, en enero de 1993, el Comité de Ministros presentó a la Asamblea Parlamentaria del Consejo de Europa un proyecto de Segundo Protocolo a la Carta Social Europea con el fin de establecer un procedimiento de *reclamations internationales* que mejoraría la "participación de sectores de la sociedad y de organizaciones no gubernamentales"[72].

En el continente americano, la adopción del Protocolo Adicional a la Convención Americana sobre Derechos Humanos en Materia de Derechos Económicos, Sociales y Culturales vino a llenar un vacío en el sistema interamericano de protección en relación con los derechos económicos, sociales y culturales. Este Protocolo dispuso que el derecho a la educación (artículo 13) y el derecho a organizarse (derechos sindicales) (artículo 8(1) (a)) también podrían implementarse mediante el sistema de peticiones (artículo 19) creado bajo la Convención Americana, mientras que para los demás derechos se podría usar el sistema de informes. Si bien el Protocolo todavía no ha entrado en vigor (por la falta de suficientes ratificaciones), sin embargo es posible vigilar los derechos económicos, sociales y culturales por medio de la presentación y examen de los informes y estudios previstos en el artículo 42 de la Convención Americana[73]. En realidad, el Informe Anual para 1991 de la Comisión Interamericana de Derechos Humanos contiene indicaciones de que está dispuesta a examinar más de cerca la situación referente a los derechos económicos, sociales y culturales en los Estados Partes en la Convención Americana[74].

A nivel global, desde que comenzó sus labores en 1987 hasta ahora, el Comité de Derechos Económicos, Sociales y Culturales de Naciones Unidas, se ha empeñado en mejorar (racionalizar y simplificar) el sistema de informes creado dentro del marco del Pacto Internacional de Derechos Económicos, Sociales y Culturales, y definir con mayor precisión la sustancia de los derechos consagrados en el mismo. El Comité ha mostrado un interés especial en los "sectores más vulnerables" de la población y ha señalado el "contenido mínimo" de cada uno de los derechos consagrados en el Pacto[75] (a la luz de la realidad de cada país). Este contenido mínimo ha de tomarse en cuenta con más fuerza aún en los períodos de recesión económica y durante la ejecución de cada fase de proyectos de desarrollo y medidas de ajuste estructural, a fin de dar prioridad a la protección de los "derechos de los pobres y vulnerables"[76] y de los "grupos marginados"[77].

Asimismo, el Comité ha analizado (debates de 1991) la utilización de indicadores económicos y sociales adecuados a fin de lograr un balance entre los conceptos de "cantidad" y –sobre todo– "calidad", con el fin de reflejar mejor la realidad de los derechos humanos. Además, al elaborar nuevas directrices para informes (en 1991), el

Comité se encargó de que se incluyeran indicadores de las condiciones de vida (v.g., en lo que se refiere a los derechos a vivienda adecuada, salud física y mental, educación) no solamente de la sociedad en su conjunto sino también de ciertos grupos, especialmente los más vulnerables. Y a partir de su sexta y séptima sesiones (1991-1992), el Comité viene estudiando un Proyecto de Protocolo Facultativo al Pacto cuyo objetivo es el establecimiento de un sistema de peticiones o comunicaciones que aseguraría la justiciabilidad de los derechos económicos, sociales y culturales (o de algunos de ellos, que se expandirían en forma paulatina), con base en la doctrina de la interdependencia e indivisibilidad de todos los derechos humanos[78].

Los "comentarios generales" elaborados por el Comité de Derechos Económicos, Sociales y Culturales hasta el momento se han centrado en temas como el mejoramiento del sistema de informes establecido por el Pacto, medidas de asistencia técnica internacional, las que impone el Pacto, el derecho a vivienda adecuada, y los derechos de los ancianos. En su importante Comentario General No. 3 (1990) sobre la naturaleza de las obligaciones de los Estados Partes bajo el Pacto, el Comité manifestó su opinión de que "a cada Estado Parte le corresponde la obligación mínima básica de asegurar que se satisfagan, cuando menos, los niveles esenciales mínimos de cada uno de los derechos"[79]. En caso del no cumplimiento, el Estado en cuestión siempre tiene la obligación de demostrar que se utilizó, o se intentó utilizar, "el máximo de los recursos disponibles", a fin de cumplir con sus obligaciones mínimas. La expresión "el máximo de los recursos disponibles" se encuentra en el artículo 2(1) del Pacto e incluye no sólo los recursos propios del Estado sino también, a criterio del Comité, los recursos disponibles a través de la cooperación y asistencia internacionales para la realización de los derechos consagrados en el Pacto (artículos 11, 15, 22 y 23 del Pacto)[80].

Si bien, por un lado, el Pacto dispone sobre la realización progresiva de los derechos consagrados en el mismo, el Comité observó que, por otro lado, impone una serie de obligaciones de efecto inmediato, a saber: a) la obligación de "adoptar medidas" progresivamente una vez entrado en vigor el Pacto (artículo 2 (1)); b) el compromiso de garantizar el ejercicio de los derechos protegidos "sin discriminación alguna"; c) la aplicabilidad "inmediata" de ciertas disposiciones para los órganos judiciales y otros que forman parte de los sistemas jurídicos nacionales (artículos 3; 7(a)(i); 8; 10(3); 13(2)(a),(3) y (4); y 15(3)); d) la obligación general de buscar en forma permanente la realización de los derechos protegidos sin medidas regresivas; e) en tiempos de crisis económica o recesión y procesos de ajuste, la obligación de proteger a los sectores más vulnerables y miembros de la sociedad por medio de programas específicos de costo relativamente bajo[81].

Otra iniciativa a nivel del sistema de las Naciones Unidas (Comisión de Derechos Humanos y Subcomisión sobre Prevención de Discriminación y Protección de Minorías) ha sido el uso creciente de relatores especiales (sobre pobreza y el derecho a alimentación adecuada, por ejemplo)[82] en relación con ciertos derechos económicos, sociales y culturales, con mandatos similares a los de los relatores temáticos. En 1993,

por ejemplo, la Comisión de Derechos Humanos adoptó una resolución sobre el desalojamiento forzoso en la cual expresó su preocupación por el hecho de que más de 1.000 millones de personas en el mundo no tenían hogar (y que esta cifra iba en aumento) -un grave problema que intensificaba el conflicto social e invariablemente afectaba a los sectores más pobres y marginados de la sociedad[83]. El énfasis subyacente de estas tendencias está en la necesidad de la justiciabilidad de los derechos económicos, sociales y culturales. La denegación o violación de estos últimos, materializada, por ejemplo, en situaciones de pobreza absoluta, afecta a los seres humanos en todas las esferas de sus vidas (incluyendo la civil y la política), con lo cual queda de manifiesto la interrelación o indivisibilidad de todos sus derechos.

5. CONCLUSIONES

Las extraordinarias transformaciones que han ocurrido en el escenario mundial han marcado estos primeros años de la década de los noventa como un período histórico de gran densidad política caracterizado por una profunda reflexión sobre las propias bases de la sociedad internacional. Estos años que nos conducen hacia un nuevo siglo se caracterizan por una revaluación global de muchos conceptos a la luz de la consideración de temas de relevancia global que afectan a la humanidad entera. Este proceso ha generado un diálogo y concertación universales, tal y como lo demuestran las dos conferencias mundiales importantes que se han realizado hasta el momento: la Conferencia de Naciones Unidas sobre el Medio Ambiente y el Desarrollo (Río de Janeiro, 1992) y la II Conferencia Mundial de Derechos Humanos (Viena, 1993). Tres conferencias más tendrán lugar en el transcurso de los próximos dos años, a saber: la Conferencia Internacional sobre Población y Desarrollo (Cairo, 1994), la Cumbre Mundial para el Desarrollo Social (Copenhaguen 1995) y la IV Conferencia sobre la Mujer (Beijing, 1995). Los temas del desarrollo, la satisfacción de necesidades humanas básicas, la capacitación de las personas y la búsqueda de una protección más eficaz de los derechos económicos, sociales y culturales (los cuales en el pasado fueron en gran medida ignorados) ocupan un lugar privilegiado en esta agenda y hasta el momento han sido objeto de atención especial.

Se ha llegado a considerar que el desarrollo sustentable abarca la erradicación de la pobreza, la satisfacción de necesidades humanas básicas (el tema central de la Agenda 21) y el mejoramiento de las condiciones socioeconómicas de vida. De hecho, el análisis de los temas ambientales y de desarrollo se ha centrado en estas cuestiones. El deterioro en las condiciones de vida de grandes sectores de la población no sólo resalta los vínculos entre el desarrollo y los derechos humanos, sino que exige que se preste una mayor atención a la satisfacción de necesidades humanas básicas y a la realización de los derechos económicos, sociales y culturales. La relación estrecha entre el desarrollo y los derechos humanos queda de manifiesto con la realización no solamente de la mayoría de los derechos económicos, sociales y culturales, sino también de derechos tan básicos como el mismo derecho a la vida (que abarca las condiciones de vida).

La Declaración de Río sobre el Medio Ambiente y el Desarrollo de 1992 coloca a los seres humanos en el centro de las preocupaciones con la realización del desarrollo sustentable, mientras que la Declaración y Programa de Acción de Viena de 1993 se aboca al desarrollo sustentable en relación con distintos aspectos del derecho internacional de los derechos humanos. Las consecuencias de colocar a los seres humanos en el centro de la transformación político económica son importantes y hacen necesaria una revaluación de los conceptos tradicionales (v.g., modelos de desarrollo, seguridad, cooperación internacional). El concepto de desarrollo humano planteado por el PNUD, destinado a ampliar las opciones de las personas, también se relaciona directamente con el tema de la observancia de los derechos humanos. El PNUD advierte, y con razón, que la pobreza constituye una grave amenaza al medio ambiente y a la sostenibilidad de la propia vida humana.

Tanto la Conferencia de Río de 1992 como la de Viena de 1993 tomaron en cuenta la condición y la necesidad especial de protección de los grupos vulnerables y de los sectores más pobres de la población como un requisito previo para el desarrollo sustentable. Esto se refleja en el texto de la Agenda 21 y la Declaración de Viena de 1993, en lo que va desde la satisfacción de las necesidades humanas básicas a la promoción de la capacitación de las personas en todas las esferas de la actividad humana. La ampliación de la agenda de los derechos humanos, v.g., con la incorporación del derecho al desarrollo, ha hecho que se asemeje en mucho a la del desarrollo sustentable. La reafirmación del derecho al desarrollo en la Declaración de Río de 1992 y la Declaración de Viena de 1993, seguida por la decisión 48/141 de diciembre de 1993 de la Asamblea General de Naciones Unidas (que creó el puesto del Alto Comisionado de las Naciones Unidas para los Derechos Humanos) ha hecho un aporte decisivo a su cristalización e inserción en el ámbito del derecho internacional positivo de los derechos humanos.

Entre los objetivos de la próxima Cumbre Mundial para el Desarrollo Social de 1995 figura el de colocar a los seres humanos en el centro del desarrollo. En este sentido se espera que aborde los temas claves de la reducción y el alivio de la pobreza (y la expansión del empleo productivo), y que de realce a la integración social (en particular, de los grupos más marginados). De la misma manera, la Comisión sobre Desarrollo Sustentable de Naciones Unidas, creada para asegurar el seguimiento institucional a la CNUMAD, en su primera sesión sustantiva (de junio de 1993) enumeró entre los "elementos críticos de la sostenibilidad" la lucha contra la pobreza y la cooperación internacional para fomentar el desarrollo sustentable en los países en desarrollo (y políticas nacionales conexas).

Es alentador percibir un creciente reconocimiento de las obligaciones básicas mínimas relacionadas con los derechos económicos, sociales y culturales. En cuanto a la reivindicación de éstos, de particular relevancia han sido las recientes iniciativas o propuestas tendientes a: a) establecer un procedimiento de peticiones o denuncias relacionadas con ciertos derechos económicos, sociales y culturales; b) racionalizar y mejorar el sistema de informes creado para monitorear estos derechos; c) designar o

hacer un mayor uso de relatores especiales para examinar aspectos de los mismos. Si se llegan a concretar, estas medidas abrirán el camino para la consecución de un mejor equilibrio en la implementación internacional tanto de los derechos civiles y políticos como de los derechos económicos, sociales y culturales. En última instancia esto significaría que por fin se daría una expresión real y concreta, en la práctica, a la tesis de la interrelación e indivisibilidad de todos los derechos humanos.

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1 Cf. World Commission on Environment and Development, Our Common Future, Oxford, University Press, 1987, pp. 75-90, 40, 43-66 y 8-9.

2 Cf. Nagendra Singh, "Sustainable Development as a Principl of International Law", International Law and Development (ed. P. De Waart, P. Peters y E. Denters), Dordrecht, Nijhoff, 1988, pp. 2-5.

3 En la opinión de la Comisión, para alcanzar el desarrollo sustentable se requiere que se satisfagan las necesidades y aspiraciones del presente sin comprometer la capacidad de las generaciones futuras de satisfacer sus propias necesidades.

4 Cf. el informe final del Simposio de Beijing sobre los Países en Desarrollo y el Derecho ambiental Internacional (agosto de 1991), copatrocinado por el PNUMA y el Ministerio de Relaciones Exteriores de China, en colaoración con las Naciones Unidas y la Sociedad China de Derecho Internacional), p. 5 (relatores A.A. Cançado Trindade (Brasil) y A. Malhotra (India)).

5 Cf. La Declaración de Brasilia sobre el Medio Ambiente (adoptada por la Cumbre Latinoamericana y del Caribe, VI Reunión Ministerial, marzo de 1989), párr. 3; Latin American and Caribbean Commission on Development and Environment, Our Own Agenda (informe 1990), pp. 45 y 68. Sobre la interrelación entre la pobreza y la degradación ambiental, cf., v.g., PNUD, Desarrollo Humano: Informe1991, Bogotá, PNUD Tercer Mundo Ed., 1991, pp. 184-185; UNEP/Governing Council, Environmental Perspective to the Year 2000 and Beyond, doc. UNEP/GC.14-26, 1987, Annex II, pp. 3-6, 21-22, 27, 34 y 37.

6 A.A. Cançado Trindade, "Environment and Development: Formulation and Implementation of the Right to Development as a human Right", Human Rights Sustainable Development and the Environment (ed. A.A. Cançado Trindade), San José/Brasilia, IIDH/BID, 1992, pp. 43-50, y cf. pp. 39-65.

7 Alexandre Kiss, "Sustainable Development and Human Rights", Human Rights, Sustainable Development and the Environment, *cit. supra* n. (6). pp. 31-34, y cf. 29-37; lo mismo se aplica en el caso de algunos derechos civiles y políticos, previstos, v.g., en el Pacto de Derechos Civiles y Políticos de Naciones Unides (1966) (*ibid.*, p. 33).

8 Capítulo 6, párr. 2, 5, 13 y 23, y capítulo 3, párr. 4 y 8-9, y capítulo 7, párr. 16, 20, 26-27, 30, 36, 45, 51 y 76.

9 Capítulo 4, párr. 5 y 8, y capítulo 6, párr. 1, 18 y 32, y capítulo 7, párr. 4-5 y 67-68.

10 Capítulo 7, párr. 6. -En cuanto a la protección de grupos vulnerables en la confluencia del derecho internacional de derechos humanos y el derecho ambiental internacional, cf. A.A. Cançado Trindade, Direitos Humanos e Meio ambiente- Paralelo dos sistemas de Proteão Internacional, Porto Alegre/ Brasilia, S.A. Fabris Ed., 1993, pp. 89-97, esp. pp. 95-96.

11 Alexandre Kiss y A.A. Cançado Trindade, "Two Major Challenges of Our Time: Human Rights and the Environment", Human Rights, Sustainable Development and the Environment, *cit. supra* n. (6), p. 289.

12 Cf. el informe Desarrollo Humano, 1993 del PNUD, *cit. infra* n. (50), p. 1.

13 CEPAL, A CEPAL e os Direitos Econômicos, Sociais e Culturais, doc. LC/BRS/NT.006, de noviembre de 1993, p. 2 (mimeo., circulación interna); cf. también CEPAL/PNUD, Magnitud de la Pobreza en América Latina en los Años Ochenta, Proyecto RLA/86/004, (1986), pp. 61-67; y Latin American and Caribbean Commission on Development and Environment, Our Own Agenda, Washington/N.Y., BID/ UNDP, 1990, p. XII. Sobre el aumento de la pobreza entre la pobliación de la región, cf. PNUD, Bases para una Estrategia y un Programa de Acción Reginal - Declaración de la Conferencia Regional sobre la Pobreza en América Latina y el Caribe (Cartagena, 1988), Bogotá, PNUD, pp. 15-16; PNUD, Desarrollo sin Pobreza (II Conferencia Regional, Quito, 1990), Bogotá, PNUD, 1990, pp. 59, 69 y 63.

14 UNESCO, La Erradicación de la Pobreza Crítica en América Latina y el Caribe, París, UNESCO, 1988, p. 6, y cf. pp. 4- 7; y cf. OEA, Informe Anual de la Comisión Interamericana de Derechos Humanos - 1979-1980, pp. 144-145.

15 O.N.U., Committee on Economic, Social and Cultural Rights Report on the Fifth Session (1990), pp. 99, 101 y 104.

16 A.A. Cançado Trindade, *op. cit. supra* n. (10), pp. 96-97, y cf. pp. 99-112 (sobre la protección de grupos vulnerables y la satisfacción de las necesidades básicas del ser humano).

17 Capítulo 4, párr. 3.

18 Capítulo 3, párr. 1-2.

19 Capítulo 6, párr 18.

20 Capítulo 1, párr. 1-2; y cf. capítulo 8, párr. 2 y 4.

21 Párrafor 7(a) y 2(b), respectivamente.

22 La Declaración de Río además hace referencia al derecho internacional humanitario aplicable a la protección del medio ambiente (principio 24), a la protección de la salud humana (principio 14) y a la interdependencia e indivisibilidad de la protección ambiental, el desarollo y la paz (principio 25).

23 Párr. 1-4.

24 Párr. 2.

25 En el ámbito de éstos últimos, también hizo referencia al derecho internacional humanitario, y expresamente a otras medidas acordes con el derecho internacional que deberían considerarse para hacer frente a la "destrucción en gran escala" no justificada del medio ambiente en tiempo de conflicto armado (capítulo 39, párr. 6(s)).

26 Cf. A. A. Cançado Trindade, *op. cit. supra* n. (10), pp. 120-121.

27 El mandato de la Comisión fue establecido por la Asamblea General de Naciones Unidas en 1992 (47° sesión).

28 Además de asegurar que se diera ese seguimiento, a la Comisión también le fue encomendada la tarea de considerar el progreso logrado en la implementación de la Agenda 21 (a niveles nacional, regional e internacional) y el fortalecimiento de la cooperación internacional y la racionalización de la capacidad decisoria intergubernamental para la integración de temas ambientales y de desarrollo.

29 ECOSOC, Report of the Commission on Sustainable Development on Its First Session (N.Y., 14-25.06.1993), doc. de la ONU E/1993/25/add.1 y E/CN.17/1993/3/Add.1, de 30.06.1993, p. 4.

30 Cf. *ibid.*, pp. 9-39. -A su vez, el Consejo Consultivo de Alto Nivel sobre Desarrollo Sustentable, en su primera reunión (nueva York, 13-14 de setiembre de 1993), decidió abocarse a los siguientes temas: a) los vínculos entre el desarrollo económico, social y político en un mundo cmambiante; b) nuevos enfoques al financiamiento y tecnología; y c) establecimiento de nuevas asociaciones entre las Naciones Unidas y otros oganismos activos en el campo del desarrollo sustentable.

31 Parte I, párrafo 27.

32 Parte II, párrafo 17.

33 Parte I, párrafo 20.

34 Parte II, párrafo 36.

35 Parte II, párrafo 98.

36 Parte I, párrafos 30-31.

37 Parte I, párrafo 12.

38 Parte II, párrafo 98.

39 Parte II, párrafo 75.

40 Cf. el informe del PNUD, Human Development Report 1990 Nueva York, PNUD, 1990, pp. 1-113. El PNUD parte de la premisa de que el ser humano debe ser el centro de todo desarrollo, y que el desarrollo humano es "un proceso en el cual se amplían las opciones del ser humano", según el informe para 1990, al centrarse en las opciones, el desarrollo humano se preocupa no sólo por la saisfacción de necesidades básicas, sino también por "el desarrollo humano como un proceso participativo y dinámico"; *ibid.*, pp. III, 1, 6 y 11.

41 *Ibid.*, p. 10.

42 *Ibid.*, p. 7.

43 Cf. el informe del PNUD, Desarrollo Humano: 1991, Bogotá, PNUD, 1991, pp. 51-57, y cf. pp. 17-235.

44 El siguiente informe (1991) analizó el tema de la financiación del desarrollo humano (incluyendo el papel de los gobiernos).

45 Cf. PNUD, Desarrollo Humano: Informe 1992, Bogotá, PNUD, 1992, pp. 25, 30 y 35, y cf. pp. 21 y 85-112. Sobre la conveniencia de mantener el IDH separado del índice de libertad política, cf. *ibid.*, pp. 75-76.

46 Sobre la instrumentalización de este nuevo concepto, cf. el informe para 1990, *cit. supra* n. (40), pp. 29-33; el informe para 1991, *cit. supra* n. (43), pp. 59-80; y el informe para 1992, *cit. supra* n. (45), pp. 29, 40 y 34.

47 Cf. PNUD, Report para 1992, *cit. supra* n (45), pp. 20 y 47, y cf. pp. 27 y 45.

48 Cf. *ibid.*, pp. 48-49.

49 Cf. *ibid.*, pp. 39, 69-72, 77 y 83-84, y cf. p. 64; y cf. PNUD, Report para 1991, *cit. supra* n. (45), pp. 51-52

50 UNDP, Human Development Report 1993, N.Y./Oxford, Oxford University Press, 1993, p. 1.

51 *Ibid*, pp. 1 y 8-9.

52 *Ibid*, pp. 27 y 21.

53 *Ibid*, p. 3.

54 Cf. *ibid*, pp. 1-8.

55 *Ibid.* pp. 5-7, 23 y 34, y cf. pp. 45-46. En un pasaje significativo, el informe para 1993 observa que "con demasiada frecuencia los seres humanos han tenido que adaptarse a funciones preordenadas por teóricos de la economía, planificadores del Estado y creadores de tecnología. Un enfoque mucho más innovador consiste en empezar con los seres humanos, invertir generosamente en su educación y en sus aptitudes técnicas y ver cuál es la mejor forma de liberar su energía y creatividad. Es necesario considerar a los trabajadores como creadores del desarrollo, y no como uno de sus residuos. El empleo debe entenderse como un proceso deliberado de capacitación y no como un mero producto secundario de la producción"; *ibid.*, pp. 46-47.

56 Alexandre Kiss y A.A. Cançado Trindade, *op. cit. supra* n. (11), p. 290.

57 Para una tipología propuesta de necesidades básicas y "satisfactorias" de las mismas, cf. e.g., M. Max-Neef *et. al*, Desarrollo a Escala Humana - Una Opción para el Futuro, Medellín, Cepaur/Fund. D. Hammarskjold, 1986, pp. 40-49, y cf. pp. 7-94.

58 Cf., e.g., CEPAL/Naciones Unidas, Población, Equidad y Transformación Productiva, Santiago de Chile, CEPAL, 1993, pp. 123-124.

59 ECLAC/United Nations, Sustainable Development: Changing Production Patters, Social Equity and the Environment, Santiago de Chile, ECLAC, 1991, p. 135.

60 Danilo Türk (relator especial), Final Report on the Realization of Economic, Social and Cultural Rights, U.N. doc. E/CN.4/ Sub.2/1992/16, de 03 de julio de 1992, p. 39.

61 Cf. *ibid.*, p. 36.

62 Artículo 2(1), y preámbulo.

63 Artículo 1.

64 Artículo 1(1).

65 En la misma sección, la Declaración de Viena conclama a la aplicación de medidas convencionales contra el vertimiento ilícito de productos y desechos tóxicos y peligrosos (por constituir una amenaza grave a los derechos humanos, a la vida y a la salud) (párr. 11).

66 Principalmente los Estados, pero también los seres humanos cf. artículos 3(1) y (3), 4(1), 2(2) y 8,

67 Artículos 3(1), 4, 8 y 10. Sobre la identificación de los obstáculos a superarse, cf. artículos 5 y 6(3) y el Preámbulo.

68 Artículo 1(1).

69 A.A. Cançado Trindade, "Legal Dimensions of the rights to Development as a Human Right: Some conceptual Aspects", U.N. doc. HR/RD/1990/CONF.36, de 1990 (U.N. global consultations on the right to Development as a Human Right), pp. 1-17.

70 A.A. Cançado Trindade, :Legal Dimensions of the Rihgt to Development..." *op. cit. supra* n. (69), pp. 1-17.

71 Cf., *ibid.*, pp. 1-17.

72 Conseil de l'Europe/Assemblée Parlementaire, Demande d'Avis du Comité des Ministres à l'Assemblée doc 6730, de 13.01.1993, pp. 1-13.

73 Para un estudio general del tema, cf. A.A. Cançado Trindade, "La question de la protection internationale des droits économiques, sociaux et culturels: Evolution et tendances actuelles", 75/76 Boletim da Sociedade Brasileira de Direito Intrnacional (1991) pp. 13-41.

74 Cf. OAS, Annual Report of the Inter-American Commission on Human Rights - 1991, Washington, OAS General Secretariat, 1992, pp. 287-305.

75 U.N., Committee on Economic, Social and Cultural Rights - Report on the Fourth Session (1990), pp. 66-67.

76 *Ibid.*, p. 88; y cf. *doc. cit infra* n. (79), p. 86.

77 U.N., Committee on Economic, Social and cultural Rights -Report on the Sixth Session (1991), pp. 116-118.

78 U.N., Committee on Economic, Social and cultural Rights - Report on the Sixth Session (1991), pp. 88-90; U.N., Committee on Economic, Social and cultural Rights - Report on the Seventh Session (1992), pp. 61 y 87-108.

79 U.N., Committee on Economic, Social and cultural Rights - Report on the Fifth Session (1990), p. 86, párr. 10.

80 *Ibid.*, pp. 86-87, párr. 13.

81 *Ibid.*, pp. 83-87.

82 Sobre las iniciativas de Naciones Unidas (informes, estudios y simposios) sobre los derechos económicos, sociales y culturales, cf. U.N. United Nations Reference Guide in the Field of Human Rights, New York, U.N., 1993, pp. 5-16.

83 Resolución 1993/77, adoptada por la Comisión en su 49 sesión (en 1993).

DRAFT DECLARATION OF PRINCIPLES ON 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 Programme 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 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, indivisibility 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,

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(*) **Note:** 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 assembled 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.

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 1

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 persons 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 actions and courses of conduct that may affect the environment and information necesssary to enable effective public 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 to reduce wasteful processes of production and patterns of consumption;
    - 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 on 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
(United Nations Office at Geneva, 16-18 May 1994)

Members:

Antônio A. Cançado Trindade (Brasilia)
James Cameron (London)
David J. A. Goldberg (Glasgow)
Mario Ibarra (Geneva)
Alexandre C. Kiss (Strasbourg)
Miloon Kothari (New Delhi)
Fatma Zohra Ksentini (Vienna)
Yves Lador (Geneva)
David C. McDonald (Minneapolis)
Meenakshi Raman (Penang)
Dinah Shelton (Budapest)
Anthony Simpson (Sydney)
Myriam Tebourbi (Geneva)
Thobeka Thamage (Athlone, South Africa)

RIO DE JANEIRO DECLARATION OF THE GROUP OF RIO

(VIII Summit ot the Permanent Mechanism of Political Consultation and Concertation, Rio de Janeiro, 1994)

(Excerpts)

1. As we meet at this VIII Annual Summit, we notice with great satisfaction that, this year, several democratic electoral processes are taking place in the Americas and the Caribbean. This fact provides clear evidence of the vitality of democracy in our region, in the consolidation and defence of which the Permanent Political Consultation and Concertation Mechanism has played a decisive role.
2. The stability of democratic institutions has made it possible for an increasingly close understanding among the countries of the region. The Rio Group has consolidated itself as an important forum for consultation and dialogue among the highest authorities of Latin America and the Caribbean. The closer relations we have established derive from the discussion of issues ranging from strictly political to economic affairs, from the strengthening of democracy to advances in the process of regional integration, from the expansion of trade to the preservation of our common cultural roots, that reinforce one another through a growing awareness of shared interests.
3. We recognize that the strengthening of democracy is closely related to a form of development which is responsive to the aspirations of our peoples for well-being and social and economic equity. We will spare no effort to preserve and promote democracy and to stimulate economic and social development in our region.
4. Institutional stability and the democratic system will be strengthened through dialogue, mutual cooperation and strict adherence to the principles enshrined in the Charters of the United Nations and of the Organization of American States, among which are non-interference in the internal affairs of each country and self-determination.
5. We reiterate the consensus reached at the World Conference on Human Rights held in Vienna in 1993, and reaffirm that all human rights are interdependent, indivisible and therefore should not be respected selectively.
6. We express our satisfaction over the appointment of a Latin American as the first United Nations High Commissioner for Human Rights, in recognition of the work carried out in this field in Latin America and the Caribbean (...)
10. Achieving economic growth and social development poses the greatest challenge facing Latin American and Caribbean countries. Measures aiming at the

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eradication of extreme poverty will continue to receive high priority by both the State and society.

11. In the knowledge that the full economic and social development of our peoples undoubtedly requires a sustained effort in the field of education, we commit ourselves to give priority to actions to eliminate illiteracy and progressively improve the quality of our peoples' education at all levels and give a larger segment of our population access to technical as well as higher education.

12. Latin American and Caribbean countries express their firm conviction that the World Summit on Social Development, to be held in Copenhagen in March 1995, offers an opportunity for the international community to assure equitable treatment to social integration, particularly to the benefit of the most marginalized and least-favoured groups, and to relieve extreme poverty and increase productive employment, (...).

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DECLARACIÓN DE GUÁCIMO

(XV Reunión de Presidentes Centroamericanos, Guácimo, 20 de agosto de 1994)

Los Presidentes de Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua y Panamá, con la presencia del Primer Ministro de Belice, reunidos en ocasión de nuestra XV Reunión Ordinaria, en Guácimo, Limón, República de Costa Rica, hemos evaluado el actual entorno centroamericano, y el significativo avance en el logro de la paz y la consolidación de la democracia en la región. Coincidimos en que las nuevas circunstancias imponen un nuevo rumbo y por ello hemos decidido adoptar una estrategia integral de desarrollo sostenible en la región, en cuyo espíritu hemos emitido la siguiente:

DECLARACIÓN DE GUÁCIMO:

Centroamérica ha cambiado. En el breve tiempo transcurrido desde los primeros acuerdos de Esquipulas, los centroamericanos hemos logrado contener casi por completo la violencia política que arrastraba a varios países de la región; se han establecido y renovado las democracias; se ha fortalecido el respeto a los derechos humanos y definido el nuevo sistema de integración regional.

Hoy con un amplio sentido de comunidad y con un riguroso espíritu de solidaridad regional ratificamos nuestra vocación democrática e integracionista, por lo que reiteramos nuestro compromiso por seguir trabajando y fortaleciendo aún más nuestros procesos democráticos, avanzar en los esfuerzos de paz, afianzando así estados de Derecho, que hagan posible un escenario político que genere las condiciones para un mejor nivel de bienestar de la población centroamericana.

Este nuevo rumbo se traduce en el respeto a la dignidad inherente a toda persona y en la promoción de sus derechos, en el respeto a la naturaleza en la que nuestra vida se sustenta, lo cual implica el mejoramiento constante de la calidad de vida y exige un cambio de actitud y comportamiento en nuestros patrones de producción y consumo. Hemos materializado dicha opción en una estrategia nacional y regional, que denominamos Alianza para el Desarrollo Sostenible, iniciativa integral centroamericana en lo político, moral, económico, social y ecológico, que concretamos en un programa de acciones inmediatas, con la cual aspiramos convertirnos en un modelo para otras regiones.

Los centroamericanos estamos convencidos de que solo la concertación, la tolerancia, la transparencia y la justicia pueden hacer sostenible a la democracia. Por lo tanto, seguiremos trabajando en el perfeccionamiento y fortalecimiento de las institucio-

nes democráticas, a fin de garantizar las libertades fundamentales y la participación creativa de la sociedad civil en la gestión de desarrollo, que integre a sectores tradicionalmente excluidos de sus beneficios.

Retomamos el camino iniciado en la Cumbre de Tegucigalpa hacia el desarrollo humano de la sociedad centroamericana desde una perspectiva integral dirigida a satisfacer las necesidades básicas de la población y superar la pobreza crítica, dando así una renovada visión social a los esfuerzos de integración centroamericana, sobre la base de una estrategia de desarrollo sostenible que privilegie la inversión en el campo social. Con este propósito, hemos decidido celebrar la Conferencia Internacional para la Paz y el Desarrollo en Centroamérica que tendrá lugar en Tegucigalpa, Honduras los días 24 y 25 de octubre próximo. Asimismo recibimos con beneplácito el Proyecto de Tratado de Integración Social presentado por la Comisión Regional de Asuntos Sociales (CRAS).

Concebimos el crecimiento económico con equidad, sin degradar los recursos naturales, pero al mismo tiempo capaz de generar oportunidades genuinas de progreso para los grupos más vulnerables de las poblaciones cnetroamericanas. Creemos firmemente que la inserción eficiente en el comercio mundial debe sustentarse en el mejoramiento de la calidad, destreza y habilidad de los trabajadores, así como en la modernización de las empresas. Avanzaremos hacia una integración con el mundo en las que las negociaciones comerciales externas se efectúen en forma conjunta.

Reconocemos ante el mundo el carácter único e indivisible del patrimonio natural de Centroamérica y asumimos la responsabilidad de conservarlo. Al mismo tiempo confiamos en que el mundo reconozca estos esfuerzos, para beneficio de las generaciones presentes y futuras. Los Centroamericanos tenemos presente el condicionamiento recíproco que existe entre la conservación ambiental y la calidad de vida de los pueblos; por ello hemos decidido celebrar una Cumbre Ecológica en Managua, Nicaragua, los días 12 y 13 de octubre próximo, oportunidad en que profundizaremos sobre la Alianza para el Desarrollo Sostenible para presentarlo al mundo como tesis centroamericana.

Es tarea fundamental para Centroamérica avanzar en la gobernabilidad de nuestras democracias. Para ello debemos fortalecer la legitimidad y la moralidad de nuestros gobiernos. Lucharemos frontalmente contra la corrupción, el abuso del poder, la inseguridad ciudadana y la impunidad. Apoyaremos la transparencia y la honradez en el manejo e información de los asuntos públicos.

El compromiso firme de nuestros gobiernos con una estrategia de desarrollo sostenible, nos ha llevado a la adopción de un Programa de Acciones Concretas, con objetivos y plazos definidos con el propósito de poner en práctica los compromisos asumidos en esta oportunidad. Las agendas políticas, económicas y sociales, aprobadas por los respectivos gabinetes, forman parte en calidad de anexo de esta Declaración.

Los acuerdos que hemos adoptado en esta XV Reunión, más los que aprobemos en la Cumbre Ecológica de Managua y la Conferencia Internacional para la Paz y el Desarrollo en Centroamérica a celebrarse en Tegucigalpa constituyen la nueva agenda regional, dentro de la cual orientaremos la acción y gestión de los gobiernos nacionales y entidades de integración centroamericana, otorgando de esta manera el más alto grado de cohesión a nuestros esfuerzos.(...)

Guácimo de Limón, Costa Rica, 20 de agosto de 1994.

José María Figueres Olsen
Presidente
República de Costa Rica

Armando Calderón Sol
Presidente
República de El Salvador

Ramiro de León Carpio
Presidente
República de Guatemala

Carlos Roberto Reina Idiáquez
Presidente
República de Honduras

Violeta Barrios de Chamorro
Presidente
República de Nicaragua

Guillermo Endara Galimany
Presidente
República de Panamá

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ALIANZA PARA EL DESARROLLO SOSTENIBLE DE CENTROAMÉRICA

(Reunión de Presidentes Centroamericanos, Managua, 12-13 de octubre de 1994)

INTRODUCCIÓN

Los presidentes de las Repúblicas de Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua, Panamá y el Representante del Primer Ministro de Belice, reunidos en la Cumbre Ecológica Centroamericana para el Desarrollo Sostenible, celebrada en Managua, Nicaragua, hemos coincidido en que las circunstancias prevalecientes en la región imponen un nuevo rumbo, por lo que hemos decidido adoptar una estrategia integral de desarrollo sostenible.

Tal como lo manifestamos en la Declaración de Guácimo, hemos materializado dicha opción en una estrategia nacional y regional, que denominamos Alianza para el Desarrollo Sostenible, iniciativa integral centroamericana en lo político, moral, económico, social y ecológico, que concretamos en un programa de acciones con las cuales aspiramos a convertirnos en un modelo para otras regiones.

La Alianza para el Desarrollo Sostenible es una iniciativa de políticas, programas y acciones a corto, mediano y largo plazos que delinea un cambio de esquema de desarrollo, de nuestras actitudes individuales y colectivas, de las políticas y acciones locales, nacionales, y regionales hacia la sostenibilidad política, económica, social, cultural y ambiental de las sociedades.

La Alianza es una estrategia regional de coordinación y concertación de intereses, iniciativas de desarrollo, responsabilidades y armonización de derechos. Su implementación se apoya en la institucionalidad y no sustituye los mecanismos o instrumentos de integración regional existentes, sino que los complementa, apoya y fortalece, intrarregional y extrarregionalmente, en especial en su proceso de convertir el desarrollo sostenible en la estrategia y política central de los Estados y de la región en su conjunto. Mediante la Alianza se reiteran y amplían los compromisos ya contraídos por los Estados para el nuevo proceso de desarrollo sostenible en el istmo.

En este esfuerzo y compromiso de desarrollo sostenible, propio de la comunidad centroamericana, asumimos la responsabilidad para un mejor aprovechamiento y manejo eficiente de los recursos de nuestra región.

En este sentido, consideramos que la comunidad internacional puede y debe contribuir al desarrollo sostenible centroamericano, por medio de un cambio de sus propias actitudes políticas y acciones hacia esta región, lo que redefinirá integralmente

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las relaciones entre la comunidad internacional y los países del istmo de manera mutuamente beneficiosa.

El Consejo Centroamericano para el Desarrollo Sostenible, instancia de impulso de la Alianza, promoverá y negociará ante los países, bloques de países y regiones, así como ante organismos regionales e internacionales de cooperación, de común acuerdo y con el apoyo de las instituciones responsables directas, tanto a nivel nacional como regional, la suscripción de acuerdos dirigidos a complementar el desarrollo sostenible de Centroamérica.

Centroamérica definirá derechos y responsabilidades enmarcados en la Agenda 21 de Río de Janeiro, con el objeto de aspirar a transformarse en un modelo de desarrollo sostenible para todos los países en donde el respeto a la vida en todas sus manifestaciones; la mejora permanente de su calidad; el respeto a la vitalidad y diversidad de nuestra tierra; la paz; la democracia participativa; el respeto, promoción y tutela de los derechos humanos, así como el respeto a la pluriculturalidad y diversidad étnica de nuestros pueblos, la integración económica de la región y con el resto del mundo, así como la responsabilidad intergeneracional con el desarrollo sostenido, serán los principios que nos regirán hacia el futuro.

CONCEPTO DE DESARROLLO SOSTENIBLE

Debido a las peculiaridades y características propias de la región centroamericana, el concepto de desarrollo sostenible que adoptamos es el siguiente:

Desarrollo sostenible es un proceso de cambio progresivo en la calidad de vida del ser humano, que lo coloca como centro y sujeto primordial del desarrollo, por medio del crecimiento económico con equidad social y la transformación de los métodos de producción y de los patrones de consumo y que se sustenta en el equilibrio ecológico y el soporte vital de la región. Este proceso implica el respeto a la diversidad étnica y cultural regional, nacional y local, así como el fortalecimiento y la plena participación ciudadana, en convivencia pacífica y en armonía con la naturaleza, sin comprometer y garantizando la calidad de vida de las generaciones futuras.

PRINCIPIOS DE LA ALIANZA PARA EL DESARROLLO SOSTENIBLE

A continuación, enumeramos los siete principios fundamentales que los centroamericanos adoptamos para lograr el desarrollo sostenible. Estos principios prevalecerán en todas las políticas, programas y actividades promovidas por los Estados, individual y conjuntamente, así como por la sociedad civil, en atención a que constituyen la base de los objetivos y compromisos de interés común.

1. El respeto a la vida en todas sus manifestaciones. El fundamento de la vida es una ética y escala de valores morales basados en el respeto, la responsabilidad personal y la consideración hacia los otros seres vivos y la tierra. El desarrollo sostenible no se logrará a expensas de otros grupos o de las generaciones futuras, ni amenazará la supervivencia de otras especies.

2. El mejoramiento de la calidad de la vida humana. La finalidad del desarrollo sostenible es mejorar y garantizar la calidad de la vida humana. Esto permitirá que las personas desarrollen sus potencialidades y puedan llevar una vida digna y de realización. Para ello es imperativo brindar seguridad mediante el desarrollo humano, el fomento a la participación social en democracia, el respeto a la pluralidad cultural y la diversidad étnica, el acceso a la educación y el fomento de la formación técnica y profesional que contribuya al crecimiento económico con equidad.

3. El respeto y aprovechamiento de la vitalidad y diversidad de la tierra de manera sostenible. El desarrollo local, nacional y regional, se basará en el aprovechamiento y manejo sostenible de los recursos de la tierra; la protección de la estructura, funciones y diversidad de los sistemas naturales, de los cuales depende la especie humana y otras especies. Con esta finalidad, se encaminarán las acciones correspondientes para:

- Conservar los sistemas que sustentan la vida y los procesos ecológicos que modelan el clima y la calidad del aire y del agua, regulan el caudal de aguas, reciclan elementos esenciales, crean y generan suelos y permiten a los ecosistemas renovarse a sí mismos;
- Proteger y conservar la biodiversidad de todas las especies de plantas, animales y otros organismos; de las poblaciones genéticas dentro de cada especie y de la variedad de ecosistemas;
- Velar por la utilización sostenible de los recursos naturales, en particular el suelo, las especies silvestres y domesticadas, los bosques, las tierras cultivadas y los ecosistemas marinos y de agua dulce.

4. La promoción de la paz y la democracia como formas básicas de convivencia humana. La libertad política; el respeto, tutela y promoción de los derechos humanos; el combate a la violencia, la corrupción y la impunidad; y el respeto a los tratados internacionales válidamente celebrados, son elementos esenciales para la promoción de la paz y la democracia como formas básicas de convivencia humana. La paz y la democracia se fortalecen por medio de la participación ciudadana. En este sentido, el fortalecimiento de las instituciones democráticas, de los mecanismos de participación y del estado de derecho son indispensables para el desarrollo sostenible.

5. El respeto a la pluriculturalidad y diversidad étnica de la región. Los países centroamericanos, en distinta medida, son sociedades conformadas por una diversidad étnica y cultural que representa una gran riqueza que debe ser preservada, creando las condiciones para que, en un marco de libertad, todas las expresiones culturales puedan desarrollarse, y en particular las indígenas, en su condición de culturas originarias que han padecido una situación de subordinación a raíz de la conquista y colonización. El derecho a la identidad cultural es un derecho humano fundamental y la base para la coexistencia y la unidad nacional. En las áreas de mayor diversidad biológica en la región están presentes generalmente pueblos indígenas, que en algunos casos practican formas de vida coherentes con la preservación del medio natural. La concepción del mundo

indígena es favorable a este objetivo, en la medida en que percibe a la naturaleza como inseparable del ser humano. Por ello, el respeto a la diversidad étnica y el desarrollo de las culturas indígenas, que es un objetivo en sí mismo, coincide con el respeto al medio natural. Sin embargo, para que el respeto al medio ambiente se concrete en una práctica coherente se necesita que, junto con las concepciones, existan opciones de desarrollo autosuficiente accesibles a la población. El respeto a la diversidad étnica sólo puede producirse en un marco de paz y de democracia y facilitando el acceso a las oportunidades de desarrollo sostenible.

6. El logro de mayores grados de integración económica entre los países de la región y de éstos con el resto del mundo. Dentro de un marco de globalización es indispensable que los beneficios de libre comercio sean asequibles a toda la región, en particular mediante la promoción y puesta en ejecución por parte de los países más desarrollados, de políticas que permitan construir en el más breve plazo, una gran zona libre de comercio e integración económica a la que tengan acceso los países centroamericanos, en condiciones adecuadas y salvaguardando las especificidades propias de sus niveles de desarrollo.

7. La responsabilidad intergeneracional con el desarrollo sostenible. Las estrategias, políticas y programas de los Estados promoverán el desarrollo sostenible y el bienestar de las presentes y futuras generaciones, potenciando el mejoramiento humano en los distintos ámbitos: político, económico, social, cultural y ambiental.

BASES DE LA ALIANZA PARA EL DESARROLLO SOSTENIBLE

El desarrollo sostenible es un enfoque integral del desarrollo que demanda esfuerzos simultáneos en las cuatro áreas base de esta Alianza y avanzar en éstas en forma equilibrada.

La democracia, caracterizada por la participación social en las decisiones que afectan a la sociedad, demanda que las políticas públicas y las formas de producir y convivir de los ciudadanos sean amplias y participativas. Asimismo, para tener éxito en el combate a la pobreza es necesario que haya crecimiento económico, y para que exista, es necesario que se mejore la calidad del recurso humano y realizar acciones que mejoren las oportunidades económicas de los más desfavorecidos mediante una política social.

La democracia y el desarrollo económico y social, no son sostenibles si no se conserva el medio ambiente y los recursos naturales. Todo lo cual reitera que el centro de este enfoque del desarrollo sostenible es precisamente el énfasis en la necesidad de hacer esfuerzos simultáneos por lograr democracia, crecimiento económico convertido en desarrollo social y manejo sostenible de los recursos naturales y el mejoramiento de la calidad ambiental.

1. Democracia

La democracia como forma básica de convivencia humana y el desarrollo están íntimamente vinculados. Sólo en una sociedad democrática y participativa de un estado de derecho se alcanzará el bienestar y la justicia en Centroamérica.

El apoyo a la consolidación de la democracia, la tutela y garantía para los derechos humanos, son la expresión del respeto a la dignidad humana y se constituye en uno de los enfoques principales del desarrollo sostenible.

La búsqueda de la descentralización y desconcentración de la actividad económica y administrativa del Estado son factores para la viabilidad del proceso, como el fortalecimiento y la consolidación de las instituciones del gobierno, de administraciones locales y gobiernos municipales. También es importante el fortalecimiento de las organizaciones no gubernamentales y comunitarias.

Derivada de esta forma de convivencia humana, la paz firme y duradera permite lograr el desarrollo sostenible, el cual requiere de relaciones armoniosas entre los seres humanos y entre éstos y el medio natural.

2. Desarrollo socio cultural

El reto social prioritario es superar los niveles de pobreza extrema en los países. La pobreza no es sólo prueba de un grave estado de atraso, sino también testimonio de desigualdad, obstáculo a la armoniosa conciliación e integración nacional y amenaza latente a la convivencia democrática y a la paz firme y duradera.

El desarrollo social dentro del desarrollo sostenible centroamericano se basa en los criterios de subsidiariedad, solidaridad, corresponsabilidad, autogestión y atención a las necesidades básicas de la población; así como en la capacitación y participación de las comunidades.

Los responsables principales serán las comunidades y sus organizaciones, las instituciones intermediarias y los gobiernos locales. El éxito del desarrollo sostenible de la región descansa en la formación y fortalecimiento de estructuras municipales responsables de la organización y participación comunitaria, así como de los servicios sociales bajo el principio de la descentralización, con amplia participación de los beneficiarios.

Las áreas de atención estarán dirigidas a:

a) Invertir en el recurso humano. En este sentido se dará prioridad a la educación básica, la salud preventiva, el saneamiento ambiental y la formación y capacitación.

b) Ejecutar programas de apoyo a la familia y grupos vulnerables a fin de posibilitar un desarrollo integral de los menores, adolescentes, ancianos y la mujer.

c) Mejorar el acceso de los grupos de menores ingresos a los servicios de prestación social y a la infraestructura social y económica.

d) Aumentar las oportunidades de acceso a empleos. Con ello se busca crear condiciones para generar actividades productivas mediante el fortalecimiento del crédito a la micro y pequeña empresa., asistencia técnica y otras acciones que mejoren las oportunidades económicas de los más necesitados.

Un elemento fundamental es el desarrollo de la conciencia pública en relación con la importancia que conlleva la promoción del desarrollo sostenible.

El respeto a la vida en todas sus manifestaciones y a su soporte natural –el territorio–, implica un conjunto de valores favorables al desarrollo de la identidad nacional en el marco de la pluralidad cultural y diversidad étnica. Asimismo, el desarrollo sostenible establece un conjunto de actitudes, hábitos y estilos de vida que fortalecen la solidaridad y junto con ello la identidad. Se considerará y aprovechará en forma adecuada el patrimonio cultural histórico y el patrimonio natural para la promoción de actividades económicas y sociales sostenibles y se promoverá el desarrollo de la creatividad en el arte, la ciencia y la tecnología.

3. Desarrollo económico sostenible

El desarrollo económico sostenible del istmo se fundamenta en la libertad, la dignidad, la justicia, la equidad social y la eficiencia económica.

La administración racional y eficiente de políticas macroeconómicas y sectoriales, así como el mantenimiento de reglas claras, congruentes y consistentes, son un requisito indispensable para el alcance y permanencia de condiciones de estabilidad económica y social. Nuestro ordenamiento socio-económico futuro conjuga todo aquello que es esencial para la convivencia pacífica de los integrantes de la sociedad y la humanización de la economía, así como la integración de los criterios costo-beneficio en ella, de los aspectos relacionados con el deterioro del ambiente y la utilización racional de los recursos naturales.

El mejoramiento a la infraestructura económica, especialmente en las áreas de energía eléctrica, telecomunicaciones y transporte, también es un elemento fundamental, no solo para el incremento de la productividad de las economías de la región, sino para el desarrollo mismo de la actividad económica en general.

La vulnerabilidad de las economías de nuestra región dependientes de exportaciones de un reducido número de materias primas, se ha reflejado en la persistencia de una considerable brecha externa. En consecuencia es indispensable obtener un mejor acceso de nuestros productos a las economías industrializadas.

La carga de la deuda y sus pagos por servicio ha impuesto a nuestros países graves restricciones a su capacidad de acelerar el crecimiento y erradicar la pobreza, por lo que para lograr la reactivación del desarrollo será indispensable que se dé cuanto antes una solución duradera a los problemas de endeudamiento externo.

Se contará con las estrategias financieras necesarias que aseguren los recursos para el desarrollo sostenible, tanto de fuentes internas como externas. En este sentido, se podría contemplar la utilización de los mecanismos de condonación, conversión y reprogramación de deudas bilaterales y multilaterales, de acuerdo con las circunstancias de cada país, el establecimiento de fondos rotativos y en fideicomiso, así como la reestructuración y reasignación de los presupuestos nacionales, dándoles su debida prioridad a los objetivos del desarrollo sostenible, y readecuando los gastos de seguridad y defensa en concordancia con la realidad de los países y el clima de paz que avanza en la región.

El modelo de desarrollo sostenible de la región estimula la creciente participación del sector privado y el pleno desarrollo de su capacidad creativa. Se dirige hacia la promoción de inversiones directas, entre otras, para la dotación de servicios a los grupos más necesitados por constituir éste un medio para aumentar la productividad y competencia, así como para mitigar la pobreza.

Asimismo, se desarrollarán iniciativas para el aprovechamiento racional de las fuentes renovables de energía, el fomento del comercio y la inversión productiva sostenible, el estímulo al ahorro, la desburocratización de la administración pública, el apoyo a la investigación y el desarrollo de tecnología limpias por medio del establecimiento de centros de investigación que faciliten a nivel centroamericano el desarrollo de estándares técnicos ambientales, la certificación de calidad ambiental de nuestros productos de exportación, que coadyuven al proceso de reconversión industrial que se está llevando a cabo en la región, así como la utilización de procesos de producción sostenible, incorporando medidas preventivas y no reactivas como las evaluaciones permanentes de impacto ambiental.

El desarrollo de recursos humanos es al mismo tiempo una condición básica para el incremento de la productividad y un vehículo importante para una mayor equidad social. En este sentido, debe asignarse un énfasis especial a la inversión en educación y salud, especialmente de cara a los grupos más necesitados como medio para aumentar la productividad, mejorar la competitividad y reducir la pobreza de la región.

Debido a las condiciones de la actividad turística en la región es necesario asegurar un equilibrio dinámico entre la protección y la conservación del ambiente y el desarrollo de esta actividad con respeto al patrimonio natural y cultural de nuestro pueblo.

El fortalecimiento y consolidación de los compromisos centroamericanos de integración son elementos fundamentales para el mejoramiento de la calidad de vida de la población para incrementar el comercio intrarregional, la apertura de nuevos mercados y la inserción de Centroamérica en la economía mundial.

Esta inserción requiere que todos los países apliquen los compromisos ya asumidos para detener el proteccionismo y ampliar aún más el acceso a los mercados sobre todo en los sectores que interesan a los países en desarrollo. Por tanto, es urgente conseguir un mejoramiento de las condiciones de acceso de los productos básicos a los mercados, en particular mediante la supresión gradual de las barreras que restringen las importaciones de productos básicos primarios y elaborados de los países centroamericanos, y la reducción considerable y paulatina de los tipos de apoyo que inducen una producción poco competitiva, tales como los subsidios de producción y exportación.

4. Manejo sostenible de los recursos naturales y mejora de la calidad ambiental

El agotamiento y deterioro de la base renovable de los recursos naturales es un problema para el desarrollo futuro en Centroamérica. La contaminación del agua, el aire y la tierra se ha incrementado rápidamente en la región y probablemente continúe si no

se reorientan los procesos actuales de desarrollo e industrialización. La principal amenaza radica en la pérdida de bosques y la disminución y deterioro de los caudales y calidad del agua, lo que a su vez es una de las causas principales de enfermedad y muerte, sobre todo en las poblaciones marginales.

El manejo sostenible de los recursos naturales y el mejoramiento de la calidad ambiental constituyen mecanismos de protección a los procesos ecológicos y a la diversidad genética esenciales para el mantenimiento de la vida. Asimismo, contribuyen al esfuerzo permanente de preservar la diversidad biológica, áreas protegidas, control y prevención de la contaminación del agua, el aire y la tierra y permiten el uso sostenido de los ecosistemas y la recuperación de aquellos que se han deteriorado.

A fin de garantizar que la conservación del entorno humano sea un instrumento que viabilice y fomente el desarrollo sostenible, los países nos hemos comprometido al diseño de políticas, con base en el marco jurídico interno y externo, en las áreas de ordenamiento territorial, energía, transporte, asentamientos humanos y población, bosques y diversidad biológica, control y prevención de la contaminación del agua, el aire y la tierra, entre otras.

Ante la grave situación que atraviesan los países centroamericanos se hace indispensable la formulación de una política y un plan maestro de generación, comercialización y consumo energético; promoviendo el uso de fuentes de energía renovables y alternas, programas de eficiencia energética y la interconexión eléctrica centroamericana.

OBJETIVOS DE LA ALIANZA PARA EL DESARROLLO SOSTENIBLE

1. Hacer del istmo una región de paz, libertad, democracia y desarrollo, a través de la promoción del cambio de actitudes personales y sociales que aseguren la construcción de un modelo de desarrollo sostenible en lo político, económico, social, cultural y ambiental en el marco de la agenda 21.
2. El manejo integral sostenible de los territorios para garantizar la conservación de la biodiversidad de la región para nuestro beneficio y el de la humanidad.
3. Transmitir a la comunidad internacional los alcances de la alianza así como la importancia y los beneficios comunes que se derivan del apoyo a este modelo centroamericano sostenible.
4. Fomentar condiciones que fortalezcan permanentemente la capacidad y participación de la sociedad para mejorar la calidad de vida presente y futura.

INSTRUMENTOS DE LA ALIANZA PARA EL DESARROLLO SOSTENIBLE

1. Consejo Nacional para el Desarrollo Sostenible. Los gobiernos hemos acordado la integración de Consejos Nacionales para el Desarrollo Sostenible con representación del sector público y de la sociedad civil.

Las áreas de acción y responsabilidades de los Consejos Nacionales para el Desarrollo Sostenible en cada país, mantendrán la coherencia y consistencia de las políticas, programas y proyectos nacionales con la estrategia del desarrollo sostenible.

2. Consejo Centroamericano para el Desarrollo Sostenible. Se crea el Consejo Centroamericano para el Desarrollo Sostenible, el cual estará integrado por los presidentes centroamericanos y el Primer Ministro de Belice, quienes podrán delegar su representación.

El Consejo adoptará y ejecutará sus decisiones, compromisos y demás acuerdos relacionados con el desarrollo sostenible a través de los organismos e instituciones centroamericanas. El Consejo de Ministros de Relaciones Exteriores, conjuntamente con el canciller de Belice, será el órgano coordinador de las decisiones presidenciales y contará para sus trabajos con el apoyo de la Secretaría General del Sistema de la Integración Centroamericana, SG-SICA, la cual actuará en estrecha relación con las Secretarías Técnicas de los Subsistemas y Entidades Regionales.

El Consejo Cnetroamericano para el Desarrollo Sostenible adoptará los mecanismos que aseguren la participación de la sociedad civil en todo el proceso del desarrollo sostenible. En particular el Comité Consultivo a que se refiere el protocolo de Tegucigalpa.

Adoptamos la presente Alianza para el Desarrollo Sostenible, en la ciudad de Managua, a los doce días del mes de octubre de mil novecientos noventa y cuatro.

José María Figueres Olsen
Presidente
República de Costa Rica

Armando Calderón Sol
Presidente
República de El Salvador

Ramiro de León Carpio
Presidente
República de Guatemala

Carlos Roberto Reina Idiáquez
Presidente
República de Honduras

Violeta Barrios de Chamorro
Presidente
República de Nicaragua

Ernesto Pérez Balladares
Presidente
República de Panamá

Henry Young
Representante del Primer Ministro de Belice

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DECLARACIÓN DE TEGUCIGALPA SOBRE LA PAZ Y DESARROLLO EN CENTROAMÉRICA

(Conferencia Internacional de Paz y Desarrollo en Centroamérica, Tegucigalpa, 24-25 de octubre de 1994)

Los Presidentes centroamericanos y el Primer Ministro de Belice, reunidos en la ciudad de Tegucigalpa, Honduras, hemos completado los compromisos básicos derivados de la Alianza para el Desarrollo Sostenible, suscrita en la ciudad de Managua, Nicaragua, el 12 de octubre pasado. Este esfuerzo, junto con los acuerdos de Guácimo, Costa Rica, y los compromisos del Volcán de Masaya, Nicaragua, muestra la creciente madurez de la gestión regional para alcanzar mayores grados de integración, democracia, progreso y bienestar para nuestros pueblos.

Centroamérica se ha propuesto, en las proximidades del nuevo siglo, construir una alianza entre sus países y también con el resto del mundo para orientar y consolidar las transformaciones que ha experimentado en los últimos años. La voluntad democratizadora que ello implica, así como la determinación inalterable de alcanzar las más altas etapas de desarrollo sostenible, se expresa no sólo en las acciones que al interior de sus países realizan los gobiernos del área, sino también en crecientes grados de integración y concertación tanto entre los Estados como con los distintos sectores de la sociedad.

Convencidos de que la paz es indispensable para el desarrollo sostenible, hacemos votos por la exitosa conclusión, a fines de este año, de las negociaciones de paz en Guatemala. Reiteramos nuestro respaldo a la determinación del pueblo de Guatemala y de su Presidente Ramiro de León Carpio para llegar a la firma de un acuerdo al más breve plazo y aplaudimos el esfuerzo que las partes realizan con el apoyo de las Naciones Unidas (ONU), Centroamérica aguarda esperanzada el fin del último enfrentamiento interno de la región.

Con esta esperanzadora perspectiva, Centroamérica se encamina a enfrentar el futuro desde una óptica de desarrollo sostenible, cuyo fin primordial es la persona humana de forma tal que ésta pueda realizar sus potencialidades y las ponga al servicio de la comunidad; esta compleja tarea solo será posible con el esfuerzo propio y el respaldo sostenido de la comunidad internacional.

Tras largos años de esfuerzo, nuestra región ha logrado, finalmente, encaminarse de manera inequívoca hacia el desarrollo sostenible. En Tegucigalpa completamos un ciclo de diálogo que abre una nueva etapa entre los gobiernos del área y de éstos con los diferentes actores de la sociedad centroamericana, las organizaciones de la integración y la comunidad internacional; relación que posibilitará una mayor comprensión de los problemas que enfrentamos de cara al nuevo siglo para redefinir la cooperación y

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solidaridad internacional en aras de satisfacer los requerimientos y aspiraciones del desarrollo sostenible.

Estimularemos el diálogo constructivo entre los Gobiernos, sociedad civil, institucionalidad regional y la Comunidad Internacional, con el objeto de debatir ampliamente la puesta en práctica de los compromisos contraídos en el marco de la Alianza para el Desarrollo Sostenible en Centroamérica.

Sobre la base de esta concertación y complacidos por la notable presencia de la Comunidad Internacional en esta Conferencia, renovamos nuestro llamado a los países amigos y organismos internacionales, para que, como una manifestación concreta de su solidaridad con la paz y el desarrollo en la región, provean la cooperación necesaria para contribuir al esfuerzo centroamericano de alcanzar nuestros objetivos de desarrollo sostenible.

Agradecemos la cálida hospitalidad del hermano pueblo y Gobierno de Honduras, determinantes para la feliz realización de la Conferencia Internacional de Paz y Desarrollo en Centroamérica.

Tegucigalpa, Honduras, Centroamérica, 25 de octubre de 1994.

Armando Calderón Sol
Presidente de El Salvador

Ramiro de León Carpio
Presidente de Guatemala

Carlos Roberto Reina
Presidente de Honduras

Violeta Barrios de Chamorro
Presidente de Nicaragua

Ernesto Pérez Balladares
Presidente de Panamá

Manuel Esquivel
Primer Ministro de Belice

Rebeca Grynspan Mayufis
Segunda Vicepresidenta de Costa Rica

-XIX-

SUMMIT OF THE AMERICAS. DECLARATION OF PRINCIPLES

(Miami, 09-11 December 1994)

(Excerpts)

The elected Heads of State and Government of the Americas are committed to advance the prosperity, democratic values and institutions, and security of our Hemisphere. For the first time in history, the Americas are a community of democratic societies. (...)

To preserve and strengthen the community of democracies of the Americas

The Charter of the OAS establishes that representative democracy is indispensable for the stability, peace and development of the region. It is the sole political system which guarantees respect for human rights and the rule of law; it safeguards cultural diversity, pluralism, respect for the rights of minorities, and peace within and among nations. Democracy is based, among other fundamentals, on free and transparent elections and includes the right of all citizens to participate in government. Democracy and development reinforce one another.

We reaffirm our commitment to preserve and strengthen our democratic systems for the benefit of all people of the Hemisphere. We will work through the appropriate bodies of the OAS to strengthen democratic institutions and promote and defend constitutional democratic rule, in accordance with the OAS Charter. We endorse OAS efforts to enhance peace and the democratic, social, and economic stability of the region.

We recognize that our people earnestly seek greater responsiveness and efficiency from our respective governments. Democracy is strengthened by the modernization of the State, including reforms that streamline operations, reduce and simplify government rules and procedures, and make democratic institutions more transparent and accountable. Deeming it essential that justice should be accessible in an efficient and expeditious way to all sectors of society, we affirm that an independent judiciary is a critical element of an effective legal system and lasting democracy. Our ultimate goal is to better meet the needs of the population, especially the needs of women and the most vulnerable groups, including indigenous people, the disabled, children, the aged, and minorities.

Effective democracy requires a comprehensive attack on corruption as a factor of social disintegration and distortion of the economic system that undermines the legitimacy of political institutions.

Recognizing the pernicious effects of organized crime and illegal narcotics on our economies, ethical values, public health, and the social fabric, we will join the battle

against the consumption, production, trafficking and distribution of illegal drugs, as well as against money laundering and the illicit trafficking in arms and chemical precursors. We will also cooperate to create viable alternative development strategies in those countries in which illicit crops are grown. Cooperation should be extended to international and national programs aimed at curbing the production, use and trafficking of illicit drugs and the rehabilitation of addicts.

We condemn terrorism in all its forms, and we will, using all legal means, combat terrorist acts anywhere in the Americas with unity and vigour.

Recognizing the important contribution of individuals and associations in effective democratic government and in the enhancement of cooperation among the people of the Hemisphere, we will facilitate fuller participation of our people in political, economic and social activity, in accordance with national legislation. (...)

To eradicate poverty and discrimination in our hemisphere

It is politically intolerable and morally unacceptable that some segments of our populations are marginalized and do not share fully in the benefits of growth. With an aim of attaining greater social justice for all our people, we pledge to work individually and collectively to improve access to quality education and primary health care and to eradicate extreme poverty and illiteracy. The fruits of democratic stability and economic growth must be accessible to all, without discrimination by race, gender, national origin or religious affiliation.

In observance of the International Decade of the World's Indigenous People, we will focus our energies on improving the exercise of democratic rights and the access to social services by indigenous people and their communities.

Aware that widely shared prosperity contributes to hemispheric stability, lasting peace and democracy, we acknowledge our common interest in creating employment opportunities that improve the incomes, wages and working conditions of all our people. We will invest in people so that individuals throughout the Hemisphere have the opportunity to realize their full potential.

Strengthening the role of women in all aspects of political, social and economic life in our countries is essential to reduce poverty and social inequalities and to enhance democracy and sustainable development.

To guarantee sustainable development and conserve our natural environment for future generations

Social progress and economic prosperity can be sustained only if our people live in a healthy environment and our ecosystems and natural resources are managed carefully and responsibly. To advance and implement the commitments made at the 1992 United Nations Conference on Environment and Development, held in Rio de Janeiro, and the 1994 Global Conference on the Sustainable Development of Small Island Developing States, held in Barbados, we will create cooperative partnerships to

strengthen our capacity to prevent and control pollution, to protect ecosystems and use our biological resources on a sustainable basis, and to encourage clean, efficient and sustainable energy production and use. To benefit future generations, through environmental conservation, including the rational use of our ecosystems, natural resources and biological heritage, we will continue to pursue technological, financial and other forms of cooperation.

We will advance our social well-being and economic prosperity in ways that are fully cognizant of our impact on the environment. We agree to support the Central American Alliance for Sustainable Development, which seeks to strengthen those democracies by promoting regional economic and social prosperity and sound environmental management. In this context we support the convening of other regional meetings on sustainable development. (...)

Our thirty-four nations share a fervent commitment to democratic practices, economic integration, and social justice. Our people are better able than ever to express their aspirations and to learn from one another. The conditions for hemispheric cooperation are propitious. Therefore, on behalf of all our people, in whose name we affix our signatures to this Declaration, we seize this historic opportunity to create a Partnership for Development and Prosperity in the Americas.

LISTA DE PARTICIPANTES DEL SEMINARIO DE BRASILIA DE 1992 / LIST OF PARTICIPANTS OF THE SEMINAR OF BRASILIA OF 1992

Conferencistas / Lecturers

1. Edith BROWN WEISS
   Professor of International and Environmental Law at Georgetown University Law Center, Washington D.C.; Former Vice-President of the American Society of International Law; Member of the Social Science Research Council's Committee on Research in Global Environmental Change; Member of various Committees of the National Academy of Sciences; Member of the American Law Institute and the Council on Foreign Relations; Member of the Board of Editors of the *American Journal of International Law.*

2. Antônio Augusto CANÇADO TRINDADE
   Ph.D. (Cambridge - Yorke Prize) in International Law; Professor of International Law at the University of Brasilia and at the Rio Branco Institute; Former Legal Adviser to Brazil's Ministry of External Relations; Judge of the Inter-American Court of Human Rights; Executive Director of the Inter-American Institute of Human Rights; Member of the International Institute of Humanitarian Law; Director of the *Boletim da Sociedade Brasileira de Direito Internacional.*

3. Günther HANDL
   Professor of Law at Wayne State University Law School, Detroit; Editor-in-Chief of the *Yearbook of International Environmental Law.*

4. Alexandre Charles KISS
   Director, Centre National de la Recherche Scientifique (France); Vice-President of the International Institute of Human Rights (Strasbourg); President of the European Council for Environmental Law; Director of the Centre for Environmental Law of the University Robert Schuman, Strasbourg; Professor of International Environmental Law at the University Robert Schuman, Strasbourg; Visiting Professor at Santa Clara School of

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Law, Santa Clara, California; Former Secretary-General of the International Institute of Human Rights (Strasbourg).

5. Stephen C. McCAFFREY
Professor of Law at McGeorge School of Law, University of the Pacific, Sacramento, California; Member of the International Law Commission of the United Nations (1982-1991); Special Rapporteur for the U.N. International Law Commission's Work on *The Law of the Non-Navigational Uses of International Watercourses* (1985-1991); Former Chairman of the U.N. International Law Commission, Geneva.

6. Dinah L. SHELTON
Professor of Law at the University of Santa Clara School of Law, Santa Clara, California; Visiting Professor at the University Robert Schuman, Strasbourg; Member of the International Institute of Human Rights (Strasbourg).

Rapporteurs

7. Washington Peluso ALBINO DE SOUZA
Profesor Titular de Derecho Económico de la Facultad de Derecho de la Universidad Federal de Minas Gerais; Presidente de la Fundación Brasileña de Derecho Económico; Ex-Director y Decano de la Facultad de Derecho de la Universidad Federal de Minas Gerais; Investigador del Consejo Nacional de Desarrollo Científico y Tecnológico (CNPq).

8. David Biddle ATKINSON
Representante del Banco Interamericano de Desarrollo en Brasil.

9. Alberto BLANCO-URIBE QUINTERO
DESS en Derecho Ambiental y DEA en Derecho Público (Universidad Robert Schuman, Estrasburgo); Profesor de Derecho Ambiental Internacional y de Derecho Constitucional de la Universidad Central de Venezuela; Director de la Fundación para la Defensa de la Naturaleza. Caracas; Abogado ("Mathison, Lupini, Ruan y Asociados") en Caracas.

10. Ana María CERDA
Investigadora y Coordinadora de Docencia del Programa Interdisciplinario de Investigaciones en Educación (PIIE), Santiago de Chile.

11. Ricardo José da COSTA PINTO NETO
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Pernambuco; Profesor de Técnica Legislativa de la Facultad de Derecho de Recife, Universidad Federal de Pernambuco; Procurador del Estado de Pernambuco; Miembro de la Sociedad Brasileña de Derecho Internacional; Miembro Asociado de la Asociación Argentina de Derecho Internacional.

12. Ruy RIBEIRO FRANCA
Former Vice-Electoral Attorney-General of Brazil; Deputy Attorney-General, Brazil (retired); Former Professor of Jurisprudence, Catholic

13. Lorena GONZÁLEZ VOLIO
Abogada Guatemalteca, Subdirectora de Operaciones Educativas del Instituto Interamericano de Derechos Humanos, San José de Costa Rica.

14. Diego ITURRALDE GUERRERO
Investigador de la Universidad Nacional Autónoma de México (UNAM); Consultor del Banco Interamericano de Desarrollo (Secretario del Fondo para el Desarrollo Indígena de América Latina y El Caribe); Abogado y Antropólogo.

15. Patricia MADRIGAL C.
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16. Elia GARCIA McCOMIE
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17. Jaime ORDÓÑEZ
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18. Carmela OSSA HENAO
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19. Gérard PEYTRIGNET
Jefe de la Delegación Regional del Comité Internacional de la Cruz Roja para Brasil, Guyana y Suriname; Ex-Delegado Regional del Comité Internacional de la Cruz Roja para Chile; Economista.

20. Argemiro PROCÓPIO FILHO
Ph.D. (Univ. Berlin), Profesor del Departamento de Ciencia Política y Relaciones Internacionales de la Universidad de Brasilia, Coordinador del Proyecto "Defensa del Hombre y de la Naturaleza en el Amazonas".

21. Vicente RAMÍREZ ALTAMIRANO
Asistente del Director Regional del Instituto Latinoamericano y del Caribe de Planificación Económica y Social (ILPES), Asesor de Cooperación Técnica Internacional del ILPES.

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