

HUMAN RIGHTS AND THE PROTECTION OF ENVIRONMENT: A NEED OF HOUR

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Abstract

Environment gives us basic of life. In current scenario protection of environment and human rights is equilibrium. The chronological measurement obvious in the protection of environmental, right to health involves not to practice any endanger act which has adverse effect on health, now human rights protection and environmental protection disclose some resemblances which cannot be ignored. There is no doubt that, at least, the links between human rights protection and environmental protection are clearly established nowadays.

Keywords: Environment, Human Rights, Protection, Law, Modern culture, right to health.

INTRODUCTION

Modern international life has been deeply marked and transformed by current endeavors to meet the needs and fulfill the requirements of protection of the human person and of the environment. Such endeavors have been encouraged by the widespread recognition that protection of human beings and the environment reflects common superior values and constitutes a common concern of mankind. The affinities between the systems of protection in the two domains of human rights and the environment are per se deserving of close attention, being further called for by the injustice perpetrated by the grave and persisting inequalities of the conditions of life among human beings and among nations; such injustice is further reflected in, and aggravated by, environmental degradation. It can hardly be doubted that human rights protection and environmental protection thus represent two major and universal challenges of our time.

The parallelisms in the evolutions of these two domains of protection remain a very topical subject, insufficiently explored to date. A general overview of the matter is bound to encompass a wide variety of aspects and concerns pertaining to the present state of the two domains of protection and the ways and means resorted to in order to secure their expansion and enhancement in the years which conduct us into the new century.¹

GROWTH OF HUMAN RIGHTS PROTECTION AND OF ENVIRONMENTAL PROTECTION: FROM INTERNATIONALIZATION TO GLOBALIZATION

The parallel evolutions of human rights protection and environmental protection disclose some affinities which should not pass unnoticed. They both witness, and precipitate, the gradual erosion of the so-called 'domestic jurisdiction' of states. The treatment by the state of its own nationals becomes a matter of international concern. Conservation of the environment and control of pollution become likewise a matter of international concern. There occurs a process of internationalization of both human rights protection and environmental protection, the former beginning with the 1948 Universal

¹ UN Covenant on Civil and political Rights, Article 4(2); European Convention on Human Rights, Article 15(2); American Convention on Human Rights, Article 27.

Declaration of Human Rights, the latter - years later - with the 1972 Stockholm Declaration on the Human Environment.²

The same appears to have been the case in the field of human rights protection, where we witness a multiplicity of international instruments: parallel to general human rights treaties (such as the two UN Covenants on Human Rights and the three regional - European, American and African - Conventions, followed in 1994 by the Arab Charter on Human Rights), there are conventions addressing concrete situations (for example, prevention of discrimination, prevention and punishment of torture and ill-treatment), specific human conditions (for example, refugee status, nationality and statelessness) and certain groups in special need of protection (for example, workers' rights, women's rights, protection of the child, protection of the elderly, protection of the disadvantaged). In sum, human rights instruments have grown, at normative and procedural levels, likewise as responses to violations of human rights of various kinds.

This being so, it is not surprising that certain gaps may appear as awareness grows of the increasing needs of protection. An example of such a gap in the field of human rights protection can be found at the present time, for example, in the protection to be extended to certain vulnerable groups, in particular indigenous populations. Another example of such a gap, which in the area of environmental protection persisted until the 1992 UN Conference on Environment and Development, could be found in the needed enhancement of international regulation on climate change and protection of the atmosphere.³

PROTECTIONS OF THE HUMAN PERSON AND ENVIRONMENTAL PROTECTION

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 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 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' (paragraph 1), to be protected by the States Parties (paragraph 2), whereas in the latter it is acknowledged as a peoples' right.⁴

Likewise, concern for the protection of the environment can nowadays be found in the realm of international humanitarian law, namely, Articles 35(3) and 55 of the 1977 Additional Protocol 1 to the 1949 Geneva Conventions (prohibition of methods or means of warfare severely damaging the environment), added to the 1977 UN 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. Similarly, 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 (for example, the 1984 Cartagena Declaration on Refugees,

² L.A. Teclaff, 'The impact of environmental concern on the development of international law', in L.A. Teclaff and A.E. Utton (eds), *International Environmental Law*, New York, Praeger, 1975, p.252

³ Kiss, 'Le droit a la qualite de l'environnement' (op. cit., note 55), pp. 80, 83; Kiss, 'La mise-en-oeuvre' pp.6, 8-9.

⁴ A. Eide, 'Realization of Social and Economic Rights and the Minimum Threshold Approach', *Human Rights Law Journal*, 10, 1989, 36, 38.

recommending for use in Central America an expanded concept of refugee, followed by the recent 1994 San Jose Declaration on Refugees and Displaced Persons)⁵.

TEMPORAL DIMENSION IN ENVIRONMENTAL PROTECTION AND IN HUMAN RIGHTS PROTECTION

The temporal dimension, so noticeable in the field of environmental protection, is likewise present in other domains of international law (for example, law of treaties, peaceful settlement of international disputes, international economic law, law of the sea, law of outer space and state succession). The notion of time and the element of foreseeability in here in legal science as such. The predominantly preventive character of the normative corpus on environmental protection, stressed time and time again, is also present in the field of human rights protection. Its incidence can be detected at distinct stages or levels, starting with the travaux préparatoires, the underlying conceptions and the adopted texts of human rights instruments (for example, the three conventions - the Inter-American, the UN and the European - against torture, of an essentially preventive character; the 1948 Convention against Genocide, the 1973 Convention against Apartheid, besides international instruments addressing the prevention of discrimination of distinct kinds). The temporal dimension is also present in international refugee law (for example, the elements for the very definition of 'refugee' under the 1951 Convention and the 1967 Protocol on the Status of Refugees, namely, the well-founded fear of persecution, the threats or risks of persecutions, besides in practice the UN 'early warning' efforts for prevention or forecasting of refugee flows).⁶

RIGHT TO HEALTH AS THE FIRST STEP TOWARDS THE RIGHT TO A HEALTHY ENVIRONMENT

Like the right to life (right of living, above), the right to health entails negative as well as positive obligations. In fact, the right to health is inextricably interwoven with the right to life itself and the exercise of freedom. The right to health implies the negative obligation 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 or degrading treatment (as recognized and provided for in the UN Covenant on Civil and Political Rights, Article 7; the European Convention on Human Rights, Article 3; the American Convention on Human Rights, Articles 4 and 5). But this duty of abstention (so crucial, for example, in the treatment of detainees and prisoners) is accompanied by the positive obligation to take all appropriate measures to protect and preserve human health (including measures of prevention of diseases).⁷

Such a positive obligation (as recognized and provided for in, for example, the UN Covenant on Economic, Social and Cultural Rights, Article 12, and the European Social Charter, Article 11, besides WHO and ILO resolutions on specific aspects), linking the right to life to the right to an adequate standard of life,⁸ discloses the fact that the right to health, in its proper and wide dimension, partakes of

⁵ See Diez Afios de la Declaración de Cartagena sobre Refugiados - Memoria del Coloquio Internacional, San Jose, ACNUR/IIDH/Gob. Costa Rica, 1995.

⁶ Ibid.

⁷ proclaimed by the 1948 Universal Declaration of Human Rights, Article 25(1). On the 'negative' and 'positive' aspects of the right to health, see M. Bothe, 'Les concepts fondamentaux du droit à la santé: le point de vue juridique', *Le Droit à la santé en tant que droit de l'homme - Colloque 1978* (Académie de Droit International de la Haye), The Hague, Sijthoff, 1979; Scalabrino-Spadea, 'Le droit à la santé - Inventaire de normes et principes de droit international', *Le Médecin face aux droits de l'homme*, Padua, Cedam, 1990.

⁸ proclaimed by the 1948 Universal Declaration of Human Rights, Article 25(1). On the 'negative' and 'positive' aspects of the right to health, see M. Bothe, 'Les concepts fondamentaux du droit à la santé: le point de vue juridique', *Le Droit à la santé en tant que droit de l'homme - Colloque 1978*

the nature of, at one and the same time, an individual and a social right. Belonging, like the right to life, to the realm of basic or fundamental rights, the right to health is an individual right, in that it requires the protection of the physical and mental integrity of the individual and his dignity; and it is also a social right, in that it imposes on the state and society the collective responsibility for the protection of the health of the citizenry and the prevention and treatment of diseases. 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.⁹

CONCLUSION

Even the process of formation and evolution of the normative corpus of the domains of protection of human rights and the environment, marked by a new global awareness, benefits today from the contribution of a multiplicity of new actors (groups, associations, non-governmental organizations, opinion makers, scientists) in interaction at the international level. That contribution renders the law-making process, besides partly non-institutionalized, at the same time more dynamic and complex. The degree of intensified participation of that multiplicity of new actors at international level is bound to mark the establishment of new conceptual-normative foundations of regimes of protection of fundamental and universal values in modern international law.

It can hardly be doubted that, at least, the links between human rights protection and environmental protection are clearly established nowadays. They represent two major challenges of our time and constitute a legitimate common concern of the whole of mankind. Pursuant to the decisions taken at the 1992 UN Conference on Environment and Development (UNCED, Rio de Janeiro) and the 1993 World Conference on Human Rights (Vienna), it is to be expected that a system of continuous monitoring (comprising also preventive measures) of respect for human rights and the environment at both national and international levels will become consolidated in the period leading up to the beginning of the new century. The unequivocal recognition by UNCED and the Vienna Conference of the legitimacy of the concern of the whole international community with, respectively, environmental protection and human rights protection, by everyone and everywhere, constitutes one of the main legacies of those two world conferences, which will certainly accelerate the construction of a universal culture of observance of human rights and the environment.

(Academie de Droit International de la Haye), The Hague, Sijthoff, 1979; Scalabrino-Spadea, 'Le droit A la sante _ Inventaire de normes et principes de droit international', Le Medecin face aux droits de l'homme, Padua, Cedam, 1990.

⁹ UN, Report of the Human Rights Committee, G.A.O.R., 40th Session(1985), suppl. Note 40 (A/40/40), p.162