

**Human rights related to the environment in international law
the right to a healthy environment as a model**

حقوق الإنسان المتعلقة بالبيئة في القانون الدولي : الحق في بيئة صحية نموذجاً

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Abstract:

A healthy environment is rooted in the dignity of every person and is necessarily linked to the guarantee of other human rights, including in particular the right to life and human development. The indivisibility and interdependence that is embodied in the environment helps the rest of the other human rights to confirm and embody those rights, as it reinforces and expands the meaning of the rights already guaranteed, such as the right to life and the right to a decent living, for this reason it is necessary to consider it - that is, the right to a healthy environment - as a right as well. For example, the right to the environment reinforces the content of the right to life, that is, the right to a dignified life must be fulfilled in environmentally appropriate health conditions to promote human development.

key words: human rights, environment, sustainable development, international law–differentiated responsibility

: الملخص

البيئة الصحية متأصلة في كرامة كل شخص وهي مرتبطة بالضرورة بضمان حقوق الإنسان الأخرى، بما في ذلك على وجه الخصوص الحق في الحياة والتنمية البشرية. عدم القابلية للتجزئة والاعتماد المتبادل الذي يتجسد في البيئة يساعد بقية حقوق الإنسان الأخرى لتأكيد تلك الحقوق وتجسيدها، فهو يعزز ويوسع معنى الحقوق المكفولة بالفعل، مثل الحق في الحياة والحق في العيش الكريم، لهذا السبب من الضروري اعتباره – أي الحق في بيئة صحية – كحق أيضاً. فعلى سبيل المثال، يعزز الحق في البيئة محتوى الحق في الحياة، أي أن الحق في حياة كريمة لا بد أن تتم في ظروف صحية مناسبة بيئياً لتعزيز التنمية البشرية.

الكلمات المفتاحية: حقوق الإنسان- البيئة- التنمية المستدامة- القانون الدولي- المسؤولية

المتباينة.

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Introduction:

Environmental rights were not among the priorities of peoples and states when the Universal Declaration of Human Rights was established in 1948, and this was perhaps acceptable given the few dangers associated with the environment at that period, and with the increasing attacks on the environment associated mainly with the increasing economic activity of states. Environmental rights have become day after day the core of the demands that societies raise periodically and urgently for states and governments.

As a result of the pressures practiced in this field, many countries have ratified many legislations that guarantee a healthy and safe environment for citizens. At the international level, countries have contributed to many international agreements aimed at addressing environmental risks.

The recognition of the relationship between human rights and the environment has taken a new direction, including the adoption of a new and clear right represented in the right to enjoy a healthy, safe and sustainable environment, in addition to linking the relationship between the right to life and the right to a healthy environment, which is considered an important achievement in the field of human rights.

Where this study aims to highlight the privilege that the environment enjoys as a legal asset, which expresses the indisputable role in implementing the decent life plan, on the one hand, and on the other hand, the search for the principle of protecting the right to a healthy environment within the recognized human rights in international law.

For this reason, we have relied on the descriptive approach as it is the closest to legal studies. We also used the analysis mechanism to reach some of the purposes of the legal articles in the international agreements in this regard.

Therefore, the following problem can be identified: What are the bases for determining the right to a clean environment as a human right in international law?

1- Human rights related to the environment :

Ramcharan states that human rights are rights which possess certain characteristics, such as universality ; essentiality to human live, security, dignity, liberty and equality ; essentiality for international order and for the protection of vulnerable groups. Gibson argued that any new right must be consistent with but not repetitive of existing human rights law, human rights law already recognises the significant links between environment and human rights protection. Following from this, Handl has argued that it is difficult to conceptualise the right to a healthy environment as an independent and inalienable right⁽¹⁾.

This was confirmed by the 1972 Stockholm Declaration on the Human Environment in the first principle, stating that the individual has the right to a healthy environment, and in return he bears a heavy responsibility in preserving this environment for future generations.

« 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, and he bears a solemn responsibility to protect and improve the environment for present and future generations. ⁽²⁾ »

As environmental awareness grows, there is greater understanding that the survival and development of humanity and the enjoyment of human rights are dependent on a healthy and safe environment. Accordingly, the need to protect and promote a healthy environment is indispensable not only for the sake of human rights, but also to protect the common heritage of mankind. By establishing the relationship between human rights and the environment, human rights and environmental instruments contribute significantly to ensuring the enjoyment of human rights and a healthy environment⁽³⁾.

1-1. The right to environmental integrity :

Almost from the emergence of contemporary concern with environmental protection in the late 1960s, the impact of environmental sustainability on the enjoyment of human rights was strongly perceived. The linkage figured prominently in the United Nations Conference on the Human Environment, held in Stockholm in 1972. In preparation for the Stockholm Conference, governments gathering at the 45th session of the Economic and Social Council specified that the conference was to focus on the impairment of the environment and the effects of this on "the condition of man, his physical and mental well-being, his dignity and his enjoyment of basic human rights in developing as well as developed countries⁽⁴⁾."

Where International law has become a broader concept of the environment after recognizing that the environment consists of several elements which interact with each other to affect the natural elements among them, namely: the natural or original element which is based on that which God created in nature in terms of the resources necessary for the stability of nature. Humanity and its continuity and the abnormal or new element which mainly depends on the systems introduced by man and the means and tools he has created that allow him to make the most of the components of the element, in addition of the environment linked to human life⁽⁵⁾.

1-2. The right to a healthy environment is a solidarity right :

The World Charter for Nature (1982) built on the rights language of Stockholm but took an ecocentric approach, giving nature rights independently from the worth assigned to it by mankind. The World Charter for Nature (WCN) is the first nonbinding document adopted by the UN General Assembly that establishes the concept of the rights of nature, identifying the global environment's needs for substantive and procedural protection from the adverse impacts of development. The WCN presents procedural rights, highlighting its collective character and enhancing justiciability for environmental damage as a subject of redress (Principle 23⁽⁶⁾). It emphasizes conservation of nature and

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natural resources, thus aiming to provide a philosophical and political framework to guide worldwide conservation efforts. Even if mainly symbolic⁽⁷⁾.

1-2-1- What do solidarity rights mean?:

International cooperation is the core of international solidarity, but that international solidarity is not limited to international assistance and cooperation, aid, charity or humanitarian assistance. International solidarity should be understood in a broader concept that includes sustainability in international relations, especially international economic relations, the peaceful coexistence of all members of the international community, equal partnerships and the equitable sharing of benefits and burdens, refraining from doing harm or posing obstacles to the greater wellbeing of others, including in the international economic system and to our common ecological habitat, for which all are responsible⁽⁸⁾.

The African Charter on Human and Peoples' Rights guarantees a precedence over other international conventions regarding solidarity rights, perhaps due to the conditions of the African continent in which economic, social and political backwardness prevails, and the necessity for international solidarity and cooperation imposed by these conditions for the development of the African continent, and to ensure the enjoyment of the various rights and freedoms stipulated in the charters International human rights, both individual and collective⁽⁹⁾. This is clear from what is stated in Article 21, Paragraph 04, which states:

« State Parties to the present Charter shall individually and collectively exercise the right to free disposal of their wealth and natural resources with a view to strengthening African Unity and solidarity ».

1-2-2- The solidarity value of protecting environmental rights :

Human rights approaches are sometimes deemed inappropriate to be used in developmental and environmental discourse because of claims about their over individualistic character. Unlike many human rights issues which are individual in nature, environmental violations often involve groups and communities, are global in dimension, and affect future generations. The creation of a brand new right reflects a progressive and expansive understanding of human rights that place the RHE within the category of solidarity, or third generation, rights⁽¹⁰⁾.

2- Call for the UN Human Rights Council to urgently recognise the Right to a safe, clean, healthy and sustainable environment as a model :

At a meeting held in Geneva on 09/10/2020, the Human Rights Council called for the urgent need to recognize the right of peoples to a safe and clean environment, especially after the Covid pandemic -19 which follows the zoonoses, as the statement says:

« The historic and urgent moment in which we live requires the UN Human Rights Council to formalize the recognition of the right to a safe, clean, healthy, and sustainable environment without any further delay. The dignity of all persons must be protected both individually and collectively, and both substantively and

procedurally, from the natural and human-made degradation of the environment and the impacts of climate change. Human rights must also be ensured as we face new environmental challenges, including systemic risks, irreversible degradations, irreplaceable loss and irreparable damages even when uncertainty remains. Such challenges must be now considered when implementing human rights. The right to a healthy environment ensures the interdependence and indivisibility of human rights and their relevance to environmental realities. Fragmented approaches cannot deliver⁽¹¹⁾. »

It should be noted that this call has been ratified by more than 350 Arab and international organizations, including the Arab Council for Human Rights, the General Confederation of Independent Trade Unions in Algeria, and the National Independent Union of Public Administration Users⁽¹²⁾.

Although this historic decision is not legally binding, it can constitute a strong incentive for states to strengthen the legal protection of the environment, knowing that the decisions of the Human Rights Council have a political nature that can affect the decisions of governments and states, which is what human rights activists have called for.

3- The principles governing the right to a healthy environment :

The meaning and legal consequences of the principles are still unsolved. Some of them have developed in a short period of time and sometimes in different contexts. Furthermore, the customs of the states are also evolving. Another factor that complicates the field of the environment is that some principles do not have a definite meaning. There is also no unanimity regarding the legal consequences of these regulations. This combination of circumstances makes it difficult to compel the international community to protect the environment.

Therefore, we will try to address the most important principles that contribute to providing a healthy environment

3-1 The principle of integration and indivisibility :

Of course, there is a close link between the right to a healthy environment and other human rights. In most cases, it may be easier to address environmental concerns through other human rights than through the right to a healthy environment, which has not yet been fully defined. Environmental degradation affects the rights to life, health, work, education and other rights. The pollution of water lakes in many countries has had serious consequences on the ability of fishing communities to earn a generous living by working with their traditional means. Documentary records prove the health problems caused by air and water pollution caused by waste from nearby and distant factories. Lead poisoning - found in paints, gasoline, and other sources - has also been shown to affect children's ability to learn, and there are many examples of this⁽¹³⁾.

3-2 The principle of common but differentiated responsibility and the balance of commitments :

The United Nations Framework Convention on Climate Change (UNFCCC) has been the principle forum for cooperation among nations on greenhouse gas (GHG)-induced climate change since its adoption in 1992. Its objective is “to stabilize greenhouse gas concentrations in the atmosphere at a level that will prevent dangerous human interference with the climate system, in a time frame which allows ecosystems to adapt naturally and enables sustainable development.”⁽¹⁴⁾

This convention included in the introduction a set of principles, in which it focused on the principle of joint and differentiated responsibility between developing countries and the..... South, as it came in the following:

« Acknowledging that the global nature of climate change calls for the widest possible cooperation by all countries and their participation in an effective and appropriate international response, in accordance with their common but differentiated responsibilities and respective capabilities and their social and economic conditions⁽¹⁵⁾, »

3-2-1: The concept of meanings contained in the principle?

A- Differentiated responsibility :

The notion of differentiated responsibility derives from both the differing contributions of States to climate change and the differing capacities of States to take remedial measures. Prior to Rio, differential treatment for developing countries was based essentially on the latter. International environmental agreements that required the complicity of developing countries incorporated references to the particular or special needs of developing countries and, in a few cases, made specific provisions for financial assistance and technology transfer. At Rio and in the process leading up to Rio, in particular in the climate negotiations, there was a growing acknowledgement of industrial country contributions to the global environmental crisis. This acknowledgement was articulated as the principle of common but differentiated responsibility. It is on the basis of this development that some writers have argued that the legal basis for the transfer of technology and financial resources from the industrial to developing countries is founded on entitlement not need⁽¹⁶⁾.

B- Common responsibility :

Just like the term indicates, this ‘common responsibility’ is closely linked to ‘a common heritage/concern of mankind’, which is a term that has been prevalent in many international regulatory contexts for quite some time. It is also stated first in the preamble of the UNFCCC that ‘change in the Earth’s climate and its adverse effects are a common concern of humankind’. The ‘common’ responsibility of CBDR can be regarded as building on that notion, which means that an issue – in this case the environment – forms a collective heritage to which everything else is linked, thus also calling for cooperative action from all

mankind to address associated concerns⁽¹⁷⁾.

3-3 The principle of environmental protection in times of armed conflict :

The most important general principle of humanitarian law in the present context is the one according to which the right of the Parties to the conflict to choose methods or means of warfare is not unlimited. This basic principle, which was first set forth in the Declaration of St. Petersburg in 1868, has been frequently reiterated in IHL treaties, most recently in Protocol I of 1977 additional to the Geneva Conventions (Art. 35, para. 1)⁽¹⁸⁾. As for Paragraph 03 of the same Article, it is a reference to prohibiting the use of means or methods of combat, which are intended or may be expected to cause widespread, long-term and severe damage to the natural environment.

Through this paragraph, these observations can be pertinent⁽¹⁹⁾:

1. The terms "widespread, long-term and severe" have not been defined. At the conference where the Protocol was drafted, agreement was merely reached on the clarification of the term "long-term", which is to be understood as referring to "a period of at least ten years".¹⁰ Since the meaning of the two other terms has not been clarified at all, no authoritative answer can be given to the question when and where any specific damage inflicted upon the natural environment should be deemed to violate the terms of this provision.

2. The triple standard put forward in this position is a cumulative one, which results from the use of the word "and": damage has to be widespread and long-term and severe in order to be prohibited. Thus, even the most widespread and long-term damage which, for some reason, would not be considered to be also severe, would not be forbidden.

4. Conclusion

The problems of the environment are no longer being viewed exclusively from the angle of the pollution affecting the industrialized countries but seen rather as a worldwide hazard threatening the planet and the whole of mankind, as well as future generations. There is now a universal awareness of the widespread, serious and complex character of environmental problems, which call for adequate action at the national, regional and international levels.

By means of a global approach to these phenomena that takes in their multidimensional aspects, including their human aspects, it has become possible to move from environmental law to environmental rights, proclaimed by the 1972 Stockholm Declaration which states in its Principle 1 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, and he bears a solemn responsibility to protect and improve the environment for present and future generations".

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