Global Justice for the Environment

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Environmental protection – attempts at international solutions

The first international treaties for the protection of the environment appeared even before World War II – note the 1933 treaty for the preservation of flora and fauna – and, since then, a continuously growing tendency for the protection of certain environmental aspects has been observed, especially marine resources.

In the 1970s, an international effort against pollution began, aiming mainly at the control of noxious substances. In the 1980s, this international tendency became more expansive, and international articles began negotiating on subjects revealing a deeper anxiety for the future. In 1982, the UN General Assembly approves a World Charter for Nature, where it is clearly stated that mankind is a part of nature and that life depends on the uninterrupted functioning of natural systems which ensure the supply of energy and nutrients. The World Charter for Nature also states that mankind's needs can be met only by ensuring the proper functioning of natural systems. A plethora of international treaties on the protection of environmental and marine resources were signed during the 1980s. Global concern for the state of the ozone layer is manifested by attempts to find international solutions.

At the beginning of the 1990s, the Rio Declaration of June 1992 is signed at an international conference that also adopts Agenda 21, an extensive document in which the balancing of two opposing political directions is attempted – protecting the environment and promoting development. On June 5, 1992, the Convention on Biological Diversity is also signed. This is a progressive international text favouring the supporters of development but also providing the foundations for supranational justice for the settlement of conflicts that may arise in the implementation of such a convention.

However, since 1992, the international environmental protection movement seems to be facing some serious obstacles. Very few texts have been ratified, and there is increasing rivalry between developed and developing countries. Efforts to reach international agreement on issues such as climate change and ozone depletion are failing. The Malmo Declaration of 31 May 2000, adopted at UNEP's Global Ministerial Environment Forum in Malmo, Sweden, sets a global agenda for environment and development and provides input for the Rio+10 summit, to convene in 2002 and confront, and possibly reassess, Agenda 21.

Is environmental protection failing?

Great efforts, global mobilisation, increased international public awareness, but the outcome is still frustrating, even though documents such as the Rio Declaration and Agenda 21 are in existence. The global movement for environmental protection is failing. The outcome of the recent conference on global climate change provides overwhelming evidence that the situation is worsening and that the international community is not in a position to get organised.

What is the cause of all this? Two main reasons can be considered responsible for this standstill. The first is the conflict between developing and developed countries; the continuous need for development by the former and the need for environmental protection by the latter. The lack of mutual trust between them, the suspicion that environmental protection hides behind a new colonisation movement, the hypocrisy of the powerful that try to impose rules that even they do not respect. Agenda 21 was an attempt at a compromise. An inspired programme was conceived and proposed with this Agenda, but there was no follow-up.

The second reason for failure is the weakness of the international institution that functions as a global environmental authority, to inspire solutions and propose resolutions. The United Nations Environment Programme, founded in 1972, is claiming – as evidenced in the Nairobi Declaration of February 1977 – exclusive rights on international environmental initiatives. Possessing a heavy bureaucracy and an extensive network in the whole world, as well as a staff of technical consultants, it is the global means of analysis, observation, proposal and updating. Specialised secretariats are also in operation, as provided by international conventions on biodiversity, migratory species, desertification, etc.

Compared with world developments in the field of human rights, the international image of environmental protection is weak. In 1948, the UN General Assembly adopted and proclaimed the Universal Declaration of Human Rights, a document drafted by the Commission on Human Rights one year earlier. Using this Universal Declaration as a basis, the Commission began putting together an impressive body of international human rights law, culminating, in 1966, in the adoption by the UN General Assembly of two human rights covenants: the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. Together, the Universal Declaration and the two Covenants are referred to as the International Bill of Human Rights. Since 1966 the Commission has been authorised to deal with human rights violations. An elaborate machinery and procedures to monitor compliance by states with international human rights law have been established in

Europe, North America and Africa. This machinery is responsible for investigating alleged human rights violations and dispatching fact-finding missions to countries in all parts of the world. Such a system is lacking in international and regional environmental protection.

International justice and human rights

Human rights are now considered the cornerstones of international justice. International legislation is deeply rooted in human rights issues, and most national and international politics revolve around them. Environmental protection was initially linked to economic factors, later to aesthetic factors and eventually to the issue of quality of life. In the end, it became apparent that environmental protection is of vital importance for humanity.

However, an international attempt – the 1994 Draft Declaration of Principles on Human Rights and the Environment, drafted by an international group of experts on 16 May 1994 at the United Nations in Geneva – to link human rights to environmental protection remained on the drawing board. Environmental protection did not join the international stream for the protection of human rights. It followed its own course and, presently, is in danger of sinking.

What we call "human rights" is a set of consolidated experiences gained by humanity on some fundamental judicial principles. These experiences are meaningful and have been distinguished from the meaningless. Human rights are laconic and not long-winded. They are not widespread treaties on politics and do not decline the self-sufficiency of national governments. In other words, human rights are not Agenda 21.

The international community has treated human rights and environmental protection in a diametrically opposite manner. Environmental protection passed from specific to more general stages, and evolved into an extremely ambitious lengthy text of governmental policy – Agenda 21 – lacking inspiration and vision. Conversely, the protection of human rights has gone from theory – the Universal Declaration of 1948 – to practice – the two Covenants of 1966 – and has reached its pinnacle in the form of the European Court of Human Rights. The second model was obviously successful. The first one should be abandoned. Environmental protection must be seen under the scope of human rights.

Protecting bios

The right to life is featured prominently in all international texts concerning human rights. Based on historical evidence, these texts aim at the protection of human life in cases of state violence such as war, genocide, or riot suppression. Under a more modern scope, however, the right to life points to a more general protection of bios as an entity under threat. If we concentrate on the heart of the matter, we will easily realise that the protection of bios is the quintessence of environmental awareness.

A global environmental justice can only focus on the heart of the matter if it is to succeed. It cannot be aggressive, for it will cause reactions. It must aspire to synthesis and consent, and set as its basis an all-encompassing experience with a view to the protection of commonly accepted indisputable goods. Environmental protection – an extremely ambitious concept – should temporarily cede its place to a realistic global plan of international justice for the protection of bios.

The rules for the protection of bios must first be set. A global covenant for the protection of the environment focused on commonly accepted principles: public health, the atmosphere, oceans, water resources, fragile ecosystems, deforestation, biodiversity, the management of dangerous substances, biotechnology. Then there is a need for a global authority, a Commission, similar to the Commission on Human Rights, that will monitor compliance by states with the covenant and have the competence to deal with complaints from member states against other states, and even with complaints filed by individuals. Finally, there is a need for a court that will resolve conflicts, *ultimum remedium*.

A court for environmental protection

A court for environmental protection should be the product of a global evolution. Experience with human rights has shown that the global community will accept – with some hesitation – the judiciary course as a means of conflict resolution only after a broader positive spirit has been established and a series of factors are in place. For instance, state sovereignty is an issue of vital importance, especially for former colonial states.

Therefore, a system of global environmental justice should be careful in its first steps. It must be based on covenants accepted by both developing and developed countries. It must not act as a force of suppression or challenge national sovereignty, because very few countries will join in. There is a need for an instrument to provide vision and solutions based on consent. An international court is the last resort; with discretionary jurisdiction at first, as provided by the Convention on Biological Diversity of 1992.

The identity of the International Court of the Environment is of little importance. It can be the Permanent Court of Arbitration – as championed by the UN in the Convention on Biological Diversity – or an ad hoc instrument. What matters is that a new evolution take place. The hidden failures must now be identified; the problem must be tackled from its roots. So far, only the international human rights movement has been able to make unhindered progress. Environmental protection – as the protection of bios – should be modestly incorporated in the human rights movement and follow in the footsteps of what was certainly a success story. Maybe, instead of having the UN take the first step, we can assign this role to the Council of Europe, within whose framework functions the most successful international institution: the European Court of Human Rights.

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