

ENVIRONMENTAL PROTECTION AND INTERNATIONAL RESPONSIBILITY

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Abstract

The environment has significant importance in preserving the world's flora and fauna. Its protection can only be achieved if environmental factors are to be found inside the domestic law. If they are outside the scope of the domestic law, it can be achieved according to the international treaties based on the cooperation between various states. Among the multitude of serious problems which the human society has been facing over the years one can mention: overpopulation, the pollution of air and water or deforestation of rainforests, without taking into account the harmful effects of those actions, the rapid extinction of some endangered plant and animal species, "the greenhouse effect" (the heating of the Earth's surface), the destruction of forests and lakes because of acid rain, the thinning of the Earth's protective ozone layer and other situations that destroy and damage the planet. All these elements mix together and they are the result of human action over the last two centuries. Many of the ecological catastrophes are the result of "technological innovations" – such as the internal combustion engine, which, over the years, had more and more negative consequences of the climate and the environment.

Keywords: *environment, global fauna, pollution, ecosystem, neutralization, independent.*

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Pollution represents a growing issue and it has significant consequences on the global ecosystem.

By means of interstate conventions, countries commit themselves to place industrial facilities at various ranges, using high technologies which don't pollute and neutralize the chemicals using treatment plants.

On the international level, various Conferences took place, which focused on the neutralization of foreign, noxious and "active leisure" substances. They recommend that in the internal regulations on the atmospheric protection one should start from Dancereaux's principles:

- all phenomena should be independently correlated;
- every phenomenon has to have a finality which has to be predicted and to underpin normative acts;
- nature represents a behavioural example for the human being;
- one should remember that nothing can be accomplished without effort.

The damage should be prevented by the law due to health reasons; the state of the nature is much more expensive than the prevention of pollution.

The European Convention from Geneva obliges the highly individualized countries from the European Economic Community to use such substances in specialized laboratories first²; the countries should also provide a ecotoxicological folder with the purpose of establishing which of the chemical substances used are biodegradable or not, have a strong toxic effect; chemical substances don't interfere with the development of flora and fauna.

Also, the World Health Organization introduces other compulsory categories which, we think, will represent important factors in preventing environmental pollution, and these aspects will be analysed in the following paragraphs.

Over the years the states were obliged to accept some aspects, related to environmental protection, such as:

- to stress the toxicity of the substance.
- to ensure their evacuation without noxiousness
- to identify the risks for humans
- to limit the effects on the environment as much as possible.

The European Council's resolutions are also directed towards the global protection of the environment, by adopting rules on road pollution (which represents a sovereign principle of environmental protection) and the principle of information exchange, cooperation between states, ecological supervision, and exchange of specialists in order to reduce pollution³.

At the same time, people have much talked about signing a protocol in Montreal on eco-standards through atmospheric preservation regarding the prevention of the environment, making the participating states to limit the production of very toxic chemical substances. Also, the protocol also stated some principles, such as:

the extraterrestrial space should only be used in human purpose;

- the interdiction to place nuclear weapons;
- the liability for the damage to the satellites.

Also, on the subject of environmental protection liability, a few other treaties on conventions have been signed, with an increased value. Therefore, the 1963 Convention established a civil liability of the states for the nuclear experiences; at the same time, the Convention forbids the placement of nuclear weapons on the bottom of oceans⁴. Ecologists consider that both the capitalist and communist society agree to these "anthropocentric" or "humanist" preferences. They all agreed to an excessive growth from an economic point of view, and to productivity instead of the environment.

This is why rivers such as Volga and Mississippi are nothing else but some residual waste discharge channels; the lakes, fish and forests from Siberia, The New England and Canada are poisoned by acid rains. Even though the Soviet Union witnessed the most important nuclear accident in the history of mankind, Chernobyl 1986, the United States were also very close to a nuclear catastrophe in the Three Mile Island (Pennsylvania), in 1979. Past and possible future accidents in the United States,

Russia, China and other countries which produce nuclear or chemically lethal weapons, without any means of precaution or safety, for hundreds or even thousands of years, remain incredibly dangerous for all mankind.⁵

Organisations such as Greenpeace are in favour of direct actions aimed at attracting the attention of the international public opinion due to the serious problems of the environment. Being aware of the nuclear and radio-active dangers of the different substances that can be found on the market without any control, Greenpeace activists have put their lives in jeopardy on a number of times by interposing their bodies between the harpoons used to hunt whales.

In their struggle to protect the environment, the members of this organization followed days in a row the illegal activities of the seal hunters, exposing them to the international public opinion, showing everybody the serious law infringements that they were making.

The actions and various strategies of Greenpeace have been harshly criticised by the governments of various countries which saw their interests strongly affected on the production and storage of nuclear weapons, radio-active and mass destruction substances. Governments such as those in Japan, Island and France and in 1985 French agents in the area of New Zealand, destroyed and sank "The Rainbow Warrior," a ship belonging to Greenpeace, killing a member of the staff. After this incident, the donations for the loss became greater and shortly afterwards a new ship "Rainbow Warrior II" was launched into water and received the mission to continue the expeditions to rescue the nature.

Other militant groups, such as Sea Shepard Society and Earth First supported the ecologic sabotage and the "tournament of the monkey" as morally justifiable protest measures, if sometimes the insults towards natural environment couldn't be prevented. Some members of Earth First! placed long metal spikes in very old tree reservations, undermining the plans of some forestry companies to cut down the trees and to gain a short-term profit.⁶

Sometimes the actions and tactics Greenpeace and other militant actions supported by Earth First! have been criticised and sometimes

renegaded by other ecologist organizations which were satisfied only with influencing the legislation and informing the public about environmental events. Therefore, the Sierra Club organization practices an active lobby on the American Congress and the states' legislations, hoping that voting the laws on protecting the environment will be a certainty. Also, it publishes book and films with an educational purpose, wanting to draw the attention towards the serious problems facing the environment.

Quite similar fighting strategies are used by the Audubon Society, The Nature Conservancy and The Foundation for Environmental Protection. Nature preservation needs funds to buy fields in order to transform them into natural reservations.

The crisis which led to ecologist movements is an environmental. We mention that this isn't an ordinary crisis; it is part of the multitude of serious problems that human society has been facing for years.

Overpopulation, air and water pollution and deforestation of rainforests, without taking into account the destructive effects of these actions, the rapid extinction of some endangered species, "the greenhouse effect," the destruction of forests and lakes because of the acid rain, the thinning of the Earth's protective ozone layer, are all aspects that destroy our planet.⁷

All these elements mix together and they are the result of human action over the last two centuries. Many of the ecological catastrophes are the result of "technological innovations" – such as the internal combustion engine, which, over the years, had more and more negative consequences of the climate and the environment.

This is why most of the ecological movements try to influence the international public opinion through positive attitudes, full of hope and due to the close relationship between nature and the human being.

The 1965 UNESCO resolution appeared due to great disruption on the world environment. The 1963 Strasbourg resolution established the principle of water protection, introducing the minimal accepted levels of water pollution and establishing control committees, with the obligation that these norms complete the principles of the sea and waterway law.

Also, international treaties have been signed regarding border waters: the 1985 Treaty from Bucharest on the regime of the Danube (control over used waters, the obligation to supervise the Danube, measures on flooding) and the 1986 Tisa Treaty which introduced norms on pollution using the risks resulted from crashes and explosions⁸.

There is also a multitude of treaties regarding the pollution of seas and oceans. The 1954 London Convention establishes clear and precise norms on oil pollution and it obliges the ships to accept the regulations of the riparian states; for a free sea the states have to work together, the bottom of seas represent goods of the humanity and are every important in preserving the ecosystem.

Therefore, one should also mention here some very important treaties: the 1972 Oslo Convention; the 1973 London Convention (which forbade the sloop of foreign waters into seas – in the 1979 Bonn Treaty, for the North Sea); for the Mediterranean Sea we have the 1976 Barcelona Convention, for the Baltic Sea the 1974 Helsinki Convention, etc.

Also, when it comes to international liability there are a few documents which protect the habitat. The United Nations Charter and its development programme state the right of the population for a healthy environment, claiming that the population can become the subject of the International Law.

We find regulations on the protection of the habitat at the two conferences in Canada and Japan. These recommend⁹:

- to rationally exploit environmental resources;
- technological reorientations in order to reduce pollution;
- the necessity for international cooperation when it comes to environmental issues;
- legal measures in order to protect the human created environment (industry, cities, human settlements);
- the human environment has to include the natural environment arranged in human purpose, in order to create an adequate social environment.

These regulations also recommend setting up a Global Committee for environment and development.

We emphasize the fact that there are some decisions of the World Health Organization that refer to human settlements, the need to respect hygiene, aesthetics, to avoid polluting the city, and ecologic accidents based on accepted norms.

The laws regarding the environment are characterized by a number of text provisions and a multitude of impleads that can be found in many laws and international Conventions.

International environmental liability takes on different forms, such as:

- criminal responsibility (the innocence of the states and of the environment);
- civil liability;
- contractual liability on damages, negligence, causation

International environmental liability has the state as its subject and the obligation to recover the prejudice, as a sanction. There are some international principles, such as:

- "*sic uteretur*" – the ecological regulation within national jurisdictions and also not influencing other states (it is promoted by Canada and the USA)¹⁰;
- the principle of good neighbourliness;
- the principle of notifying and consultation, information, reciprocal warning; it was presented by the Council of Europe;
- the pollution prevention principle;
- the principle to forbid pollution by the signatory states;
- the lack of discrimination principle;
- the principle that states that the one who pollutes pays.

There are also some rules included in the "*legelata*" treaties and conventions and some included in declarations and resolutions ("*legeferenda*"). These norms should be as quickly as possible transformed into *legelatanorms*.

In order to prevent natural catastrophes and the pollution of the environment we offer some "*legeferanda*" propositions, such as:

- the development at a global level of the environmental admissible standards;
- the political examination and of the national laws regarding the environment;
- the harmonization of international policy on liability in international law;

- adoption of laws at European Community level;
- adoption of specific laws which belong to the ministries' in order to uphold legal norms by protecting the environment;
- the creation of an International Court of Law with the competence of not upholding the State's principle which forbid environmental pollution at an inter-state level, as well as judging the people responsible.

If we refer to the States' duties on the matter of international liability, one can include:

- every State has the obligation to precisely determine the noxiousness of different pollutants;
- every State has the obligation to take measures, establishing the industrial location;
- it has to ensure the material and financial means;
- every State has the obligation to ensure the operation of protective devices;

When it comes to international liability, the European Community establishes extremely precise environmental protection principles. Therefore, it is considered that, in order to promote the quality of people's lives, one should first create a healthy and agreeable natural environment; at the same time, inter-state cooperation has to be accomplished at the highest level possible, and it should rely on mutual support and help at any time; at the same time people should be aware of the fact that the environment and its assets are exposed to some specific dangerous; objective liability will have to work if toxic emissions will damage other countries.¹¹

Some jurisdictional aspects as well as aspects regarding the international legislation have to be taken into account when it comes to assigning liability:

- to clearly delimit risk and guilt liabilities;
- to establish some prejudices, concurring criteria between the USA and Romania;
- to establish some criteria which will clearly link the fact with the prejudice.

In International Law there are 2 concepts. One has a global order and it doesn't recognize the state's independence on the international

legislation regarding the environment, and another one, with a regional order, which is based on the regional regulations based on common problems, on ecologically defined areas, delimited by the states concerned.

The existence of multiple resolutions regarding this matter, offers some *ferenda* law solutions concerning the signing of new treaties and conventions.

The most important principles regarding environmental protection are¹²:

- the principle of national jurisdictions;
- the principle of good vicinity;
- the principle of notification and consultation;
- the principle of protecting the common heritage.

In order to attract international liability on the environment and its protection, some essential conditions have to be fulfilled:

- committing an intentional or negligent act;
- there will definitely have to be a causal link between the deed and the prejudice;
- according to the 1974 Stockholm Constitution regarding the Charter for states' economic rights and obligations, the countries' are obliged not to cause prejudice to other states or regions which do not have an international jurisdiction.

The International Law Committee also established some rules regarding crimes under the international law, offences judged by the International Court of Justice, as well as taking responsibility not only by the victim states, but also by other states¹³.

The prejudice is not the only thing that can be repaired, but sometimes the criminal sanction sometimes appears. The state's liability does not absolve the individuals who have committed such a crime. Here we notice the irresistible force majeure, also recognizing the state of emergency when faced with a difficult and imminent danger. The state didn't have any other solution (a fact that has to be proven) than the one that is not in accordance with its international obligations.

Violating an international obligation attracts the *erga omnes* liability for the entire community.

The liability is strict, based on the idea of risk and warranty. The Vienna Convention establishes civil liability for nuclear damages. Liability belongs to the one who produced the accident and not engaging the State for a period of 10 years in an armed conflict on the territory where the catastrophe took place.

The state becomes responsible at any time when the accident is established. That is why a benefits and compensation fund for victims of pollution was created, the ability to judge such cases belonging to the court in the vicinity of which the deed took place. When it comes to compensation, things are rather clear, being explained in the 1969 Vienna Convention, which states that the principle of liability and damage compensation belong to the operator, and in case of its insolvency the liability belongs to the State¹⁴.

Endnotes

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