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**RIGHT TO ENVIRONMENT AND INTERNATIONAL LAW :  
DIMENSIONS AND IMPLICATIONS**

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No where the clamour for incorporation of ethical considerations into the international legal system regarding human rights is heard more intensely than in the field of international affairs. Whenever there is a war, military coup d'etat, external intervention, terrorists' massacre, bombardment of innocent civil persons, earthquake or any natural calamity decimating human beings, the reactions, responses, and spate of activities from among the nations have always been couched not only in high sounding humanitarian, moral and ethical terms but also in legal denominations. The burial of both cold war and communism in the former Soviet Union and the ravage of the planet earth with all its horrendous consequences upon the very survival of mankind and living beings bring into sharp focus the basic issues and problems hovering round human rights in two fundamental dimensions.

Fistly, the issues of human rights have gone beyond their cold war narrow political grooves and no longer remained in the global strategic shafts of superpowers as a potent weapon to reap their political dividends. The debate between North and South concerning environmental issues brings a new dimension to human rights.

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Secondly, human rights have assumed a new moral and humanitarian foundation contesting the political, social, and economic contexts in which they are hitherto interpreted by the western countries.

The ideological debates during the cold war which confined political rights to western democracies and economic rights to socialistic countries have already become sterile and the scope of human rights has not only covered both but also gone far beyond into a wider panoply of claims of individuals, diverse racial, cultural, religious, ethnic groups, and communities to mould their own pattern of development and system of government and to have a right to environment, access to the resources of the earth, and to live and survive on this earth.

It begs no description that there have been catastrophic changes in the physical condition of the earth. Forests are dwindling at an alarming proportion. Deserts are expanding and crop lands are losing topsoil. Every year some six million hectares of land are so severely degraded that they lose their productive capability and become wasteland. A major contribution to the emission of carbon dioxide to the atmosphere in terms of green house effect and punching holes in the ozone layer stems from the rich industrialized countries of the North. A majority of poor people in the South will be victims of this environmental hazards caused by the deterioration in the ecosystems as they lack the necessary financial and technological wherewithal to withstand these. But the environmental debate has been conducted in such a way, as seen at Rio Earth Summit, as to contain much of North's contentions about sharing the management of the pollution of the environment on an equitable basis which has been denied to the South while sharing the management of the resources of the earth and atmosphere.

Thus, an indissoluble connection between the degradation of the environment and the very living process of the communities whether they are indigenous people, minorities workers, rural population, villagers, city dwellers or individuals, is found. Notwithstanding Fatma Ksentini's interim report to UN sub-commission on human rights, making an indissoluble link between human rights and right to environment, fails to enter into the agenda for its meeting.

-To define right to environment has not been that easy as a host of writers and jurists tend to define it in different ways.<sup>1</sup> Of all the universal and regional documents relating to human rights, the African Charter of Human and Peoples Rights contains the most specific provisions for environmental protection which provides that all people should have the rights to a generally satisfactory environment favorable to their environment. The World Commission on Environment and Development (Our Common Future 1987) has proposed that as a fundamental legal principle "all human beings have the fundamental rights to environment adequate to their health and well being."<sup>2</sup>

### Basic premises

1. The Western ethnocentrism of capitalist development based on fossil fuel intensive technology and industrialization brings out an anti-thesis between nature and man and recognizes the unlimited and unrestricted right of man to exploit the nature.<sup>3</sup> Thus, the very right to development as understood in western paradigms comes directly in conflict with the environment. In order to have right to environment the right to development is to be redefined in terms of sustainability with nature and environment. Right to development and right to environment are inherent in each other. Right to development does not go beyond the natural threshold and the carrying capacity of the earth and also does not deprive others of the same right and the right to environment. It is based on the principle of equity of all. Also it recognizes the future generations' right to the environment and to the natural resources of the earth. As Rajni Kothari remarked: "The metropolitan centers of power and today's men have no legitimacy to

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1. See, W. P. Gormley. "The right of individuals to be guaranteed a pure, clean and decent environment: Future program of the council of the Europe", *Legal Issues in European Integration*, 38, 1975.

2. World Commission on Environment and Development, *Our Common Future* (London: Oxford University Press, 1987), p. 348.

3. Judeo-Christian tradition is that "Since everything is for man's use, he is at liberty to modify it as he will". See, J. A. Passmore, *Man's Responsibility for Nature* (Scribner, 1976), p. 17, cited in A. D. Tarlock, "Earth and other Ethics: The Institutional Issues", *Tennessee Law Review*, 45, 1988, p. 56.

colonize the future. How is one to assure that the interests of the younger generation and yet to be born generations of the future are somehow represented in the present".<sup>4</sup> That means the right to environment represents right to development in terms of not only intragenerational equity but also intergenerational equity and harmony with nature.

2. The right to a healthful environment may be regarded also as vital aspect of the right to life. Without a sound and healthy environment it would not be possible to sustain an acceptable quality of life or even life itself. Without a life enriched in a sound environment what is the significance of all other rights like right to liberty, freedom of speech and right to equality

3. Another fundamental character of basic human rights is their inalienability as pronounced by the American Declaration of Independence. It can be unhesitatingly said that the right to a healthful environment is not a right that can be waived or surrendered in view of its fundamental and symbiotic relationship with the very basic life process of a human being.

4. The need for a healthful environment is vital to the protection of life and enhancement of its quality and condition. If an environment is ravaged by the rapacious man to the extent of denying to other homo sapiens their life giving and life sustaining elements, the very process of development of man's personality will be impeded.

5. There are universal human rights. Their interpretation and understanding varies from region to region, culture to culture and from one political system to another political system. But the universal validity of right to environment cuts across time, space and society. It is the very life breath of human beings, societies, groups and civilizations. What gives a meaningful existence to other human rights is the very right to environment.

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4. Rajni Kothari, "Environment, Technology and Ethics" in J. Ronald Engel and Joan Gibb Engel, (eds.), *Ethics of Environment and Development* (London: Belhaven Press, 1990), p. 30.

### Place in the International Law System

With the adoption of United Nations Charter in the year 1945, the philosophy of human rights entered into the jurisprudence of international law. Universal Declaration of Human Rights is at present not only considered to be an authoritative interpretation of the United Nations Charter but also regarded as constituting a substantial part of the constitutional structure of the world community.<sup>5</sup>

The right to a healthful environment is rooted in the right to an acceptable quality of life which also extends to right to life itself. In article 1 (3) of the Charter, there is a reference to promoting and encouraging respect for human rights and fundamental freedoms, if the right to a healthful environment is inherent in the right to life itself. It can be found in the Article 3 of the Universal Declaration of Human Rights and in Article 6 (1) of the International Covenant Civil and Political Rights. In the preamble to the Stockholm Declaration of 1972,<sup>6</sup> the enjoyment of a healthful environment has been linked with the right to life. Specific mention is made in Article 12 (2) of the International Covenant on Economic, Social and Cultural Rights of the obligation on state to provide for the "improvement of all aspects of environmental ... hygiene."

If right to environment is construed as implied in all these above documents, it can be said that the right to environment can be exercised not only against other states for transnational environmental damage and pollution but also against one's own state for local environmental injury.<sup>7</sup> It is negative in the sense that it can exercise injunctions against states to ensure against environmentally harmful acts. It is positive in the sense that it gives direction to the states to create conditions for a healthful environment.

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5. L. B. Shon, "The International Law: Protection of the Rights of Individuals Rather Than States", *American University Law Review*, 32:1. 1982, p. 9., p. 19.

6. UN. *Report of the United Nations Conference on the Human Environment*, 1-16, June 1972, Stockholm, Sales No. B. 73.11. A. 14. 1973.

7. H. J. Uibopuu, "The Internationally Guaranteed Right of an Individual to a clean Environment.", *Comparative Law Year Book*, 107, 1977, p. 1.

Increasingly there is an intense drive for environmental rights not only of individuals but of communities to bring it to the centre stage of issues of human rights. The Sierra Club Legal Defence Fund, a U. S. Organization that pressed for the Human Rights Sub Commission Study speaks of "an increasingly obvious link between environmental degradation and health and welfare of communities, whether they be indigenous people, minorities, workers, rural population villagers or city dwellers. Further, it vouchsafes for an increasingly recognized right of communities, minorities and other affected people to informed participation in decisions that threaten their health, resources and ecosystems on which they depend for survival."<sup>8</sup>

There is, however, another aspect to environmental rights which belong to a group of individuals. In certain cases they may have a regional and even a global dimension. For example, a nuclear fall out, or acid rain may affect an entire region. The depletion of the ozone layer and the green house effect could have consequences affecting the entire planet.

What is needed is an integrated system of environmental law founded on environmental concepts, ethics, and values that will address itself and explore all possible approaches to the task of finding solutions to various environmental issues affecting the entire humanity living on this earth. There is a great point in what Richard Falk suggests for "a new centralized structure that can manage the affairs of a planet on a unified basis, in order to produce an ecological model of equilibrium"<sup>9</sup>.

As discussed, the international law of human rights can frame an appropriate value structure for environmental rights. Since the environmental degradation has transboundary effects, the use of stereotypes of state sovereignty as a pretext on the part of governments not to implement environmental law, can no longer be valid and employed. Another important aspect of environmental law is that it proceeds from a different motivation which is mostly humanitarian and has a moral and ethical foundation. This

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8. *Down to Earth*, Vol. 2, No. 3, June 30, 1993, p. 35.

9. R. A. Falk, "The Logic of State Sovereignty versus the Requirements of World Order," *Year Book of World Affairs*, 7, 1973, p. 23, 27.

makes the international law of human rights more relevant to the cause of environmental law which tends to beneficially affect not only national but also transnational and even global life, that is, the life of people, individuals everywhere. It is also very significant that the international law of human rights as well as environmental law depend for their implementation on national, regional and international institutions. In a recent meeting at Malta in December, 1990, the UNEP Group of Legal Experts to Examine the Implications of the "Common Concern of Mankind" Concept on Global Environmental issues saw in the human framework the proper place for environmental protection. A bridge between the two lay in the fundamental rights to life and health in their extended dimensions. The Group noted further that the protection of valuable groups, such as indigenous populations, "lay at the confluence of environmental protection and human rights protection".<sup>10</sup>

### **Dimensions and Implications**

1. Right to environment is humanitarian, ethical and moral and applicable to all individuals, groups and people transcending political and natural boundaries. It is based on the recognition that there is no anti-thesis between nature and man. There can be no assertion of human rights against the non-human components of the ecological system. The relevance of non-human components of the ecological system is taken into account for determining the inherent worth and quality of human rights to a healthful environment.

2. As said earlier, one of the premises of right to environment is not only intragenerational but also intergenerational. That means, the present generation has no right to deprive the future generation of the same right to a healthful environment. In other words, the present generation is both the user and trustee of the resources of the earth. This universal and unequivocal

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10. T. Iwama (ed.), *Policies and Laws on Global Warming : International and Comparative Analysis*, Environmental Research Center, 1991, pp. 11-12.

recognition of the duty to protect the interests of future generation may be evolved into a customary principle of international law<sup>11</sup>

3. Since environmental degradation has transboundary effects, the protection of the ecosystem has become the common concern of mankind. This concept was the subject of reference in the United Nations General Assembly Resolution No 43-53 of December 1988. The UNEP Group of legal experts at its meeting in December 1990 in Malta, expressed the view that the concept of "common concern of mankind" is a more suitable and neutral concept in dealing with planetary resources than the earlier concept of "common heritage of mankind". It implies a link with human rights framework and long term temporal dimension including the future generation. The common concern implies the preventive character of environmental protection and also responses called for.

4. The very concept of development based on western mimetic universalistic model has created more problems than solved and brought a yawning wedge between the North and South in terms of inequality, exploitation and imbalance in trade. Thus, what is development to western hemisphere is the cause of persistent poverty and immiseration in the Third World and irreversible despoliation of the planet earth. Thus, a new concept "sustainable development", was coined by the United Nations Conference on the Human Development and Environment at Stockholm in 1972, which found favour with the World Commission on the Environment and Development in the Brundt Report "Our Common Future" (1987). In this connection the various treaties and conventions relating to climate, biodiversity and ozone treaty (Montreal Protocol) signed at Rio Earth Summit may be taken note of. These are in the direction of limiting and countervailing the damages done and will be wrought to the environment in the future.

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11. See, Edith Brown Weiss, "Intergenerational equity : A legal framework for global environmental change," in Edith Brown Weiss (ed.), *Environmental Change and International Law* (Tokyo: United University Press, 1992) , pp. 385ff.



Another important of this right to environment is the revolutionary challenge it poses to all countries of the world to find out alternative models of development friendly to both human beings and environment . To what extent the Third World countries would be able to take up the challenge depends on their own exploration of knowledge and genius. Otherwise, they would again be subject to the same commercialization of alternative environmentally sound technologies if developed by the rich industrialized countries.

5. As a result of heavy industrialization and installation of power projects, many indigenous people have been uprooted from their homelands severing their close, deep cultural and emotional linkages and making them simply flee into other neighbouring countries as refugees. Many protestation movements like the *chipok* in India in recent days have mushroomed against these projects. The nature of their dependence on their habitat is so total that any interference with it would constitute a blatant aggression on their very right to live. The United Nations Sub-Committee on the Prevention of Discrimination and Protection of Minorities described their relationship with the land as comprising their "whole range of emotional, cultural, spiritual and religious considerations".<sup>12</sup> The World Commission on Environment and Development has referred to this danger that the indigenous people faces. In the same vein, it can be said that the Universal Declaration of Human Rights in its Article 22 stresses upon the protection of individuals, social, economic and cultural rights. More clear cut provisions are needed to be incorporated into international law to protect the rights of indigenous people against their forcible evacuation.

6. As a result of natural calamities or deterioration in environment many individuals in Asia, Africa and Latin America are fleeing from their home countries to foreign and neighbouring countries as environmental refugees. The Convention relating to the Status of Refugees and related

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12. United Nations Sub-Commission on Prevention of Discrimination and Protection of Minorities, *Study of the Problem of Discrimination against Indigenous population*, 28, UN, doc. E/CN. 4/sub. 2/1986/7 and Adds 1-4 (1986).

protocol was broadly intended for the benefit of European refugees from Eastern Europe during cold war period. A differential treatment was given to European refugees denying the humanitarian aspects to the refugees from the Third World countries. The Organization of African Unity's Convention governing the specific aspects of refugees problems in Africa and the Cartagena Declaration by the Organization of American States have gone beyond the UN conventions, granting protection to persons who "owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or nationality is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality".<sup>13</sup> In the absence of sufficient provisions in the present international refugee law for the protection of refugees, conditions for environmental degradation can be immeasurably created.

### Concluding Remarks

Human rights have entered a new phase with the right to environment becoming one of its fundamental and challenging aspects. The development of environmental law marks further a turning point in the progress of international law. The environmental law carries the international law beyond the individual to the local or national community or global community and even beyond the nature and ecosphere. It has now assumed a moral and ethical significance binding all to its principles, if a civilization is to live in peace and harmony with all its parts whether living or non-living on the basis of equity and justice.

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13. Cited in J.C. Hathaway, "A Review Consideration of the Underlying Premise of Refugee Law" *Harvard International Law Journal*, 176, 1990. p. 31.