

The environmental rights

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Ingurugiro egokirako eskubideaz dihardu oraingo txosten honek. Eskubide hori ez da gizarte garapenaren emaitza, aurrerapenerako ezinbesteko baldintza baizik. Eskubide hori giza biziari berari loturik dago: ubi homo, ibi societas; ubi societas, ibi ius. Ingurugiro egokia, jakina, legearen beraren aurretiko baldintza dugu; ingurugiro egokirik gabe, ez da gizakirik, ez gizarterik, ez eta legerik ere.

Giltz-Hitzak: Giza eskubideak. Nazioarteko ingurugiro-zuzenbidea. Printzipio etikoak eta politikoak.

Este informe trata sobre el derecho a un medio ambiente adecuado. Este derecho no es resultado del desarrollo social, sino un requisito fundamental para el progreso. Este derecho está vinculado a la vida humana en sí misma: ubi homo, ibi societas; ubi societas, ibi ius. Un medio ambiente adecuado es obviamente un requisito previo a la propia ley; sin un medio ambiente adecuado, no hay seres humanos, ni sociedad, ni ley.

Palabras Clave: Derechos humanos. Derecho medioambiental internacional. Principios éticos y políticos.

Ce rapport traite du droit à un environnement adéquat. Ce droit ne résulte pas du développement social, mais d'une condition fondamentale pour le progrès. Ce droit est lié à la vie humaine en elle-même: ubi homo, ibi societas; ubi societas, ibi ius. Un environnement adéquat est évidemment une condition préalable à la propre loi; sans un environnement adéquat, il n'y a pas d'êtres humains, ni de société, ni de loi.

Mots Clés: Droits de l'homme. Droit de l'environnement international. Principes éthiques et politiques.

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1. INTRODUCTION

The old fable by Esopus, the hen that laid golden eggs, explains brilliantly the relationship between most human beings and the Earth. We are aware today of the physical limitations of our environment and realize that only foolishness may lead to overexploitation of the resources of the planet without taking into account its future consequences. Consciousness about the unsuitability of current models of development -which are based on principles analogous to the ones that determined the behavior of the owner of the hen that laid golden eggs- is triggering powerful responses from society. Law is responding to the new social demands by providing useful tools to address environmental challenges. One of the most relevant legal responses to environmental abuses -from both a theoretical and practical perspective- has been recognition that environmental protection also belongs to the *conceptual universe of human rights*¹. Particularly, that human beings hold a right to an environment which is adequate to the development of the person ("right to an adequate environment")².

Human rights have become a key parameter of our development as a civilization: we value the legitimacy of a political system according to its recognition and protection of human rights. However, human rights are still the object of heated debates as to their nature and definition, and we find ourselves far from achieving a universal formulation of their content. We believe there is consensus in defining them as a group of ethical and political principles which become the basis of any legal system once they have been legally recognized. This theoretical validity renders human rights law as an ideal legal instrument to protect fundamental values, and, in addition, permits political aspirations to be shaped under human rights law by either becoming incorporated in the content of pre-existing human rights or obtaining independent recognition. This is why we talk about "generations" of human rights. Rights have been claimed, formally recognized and enforced throughout different periods of time, in an evolutionary process that continues today³.

Concern about the environment is relatively recent, and its reflection in the human rights arena is too. Nevertheless, debate over the legal nature of environmental rights started in the 1970s and has been acquiring momentum gradually, particularly in the past decade. Academics have been reflecting on the legal nature of the right to an adequate environment, and many have contributed to fostering its formal recognition at both the international and the national level⁴. The debate on the matter continues to be alive, both between defenders and

¹ Using the phrase of Prof. Canjado Trindade. See *Derechos Humanos, Desarrollo Sustentable y Medio Ambiente* (A.A. Canjado Trindade, ed.), Instituto Interamericano de Derechos Humanos, Banco Interamericano de Desarrollo, 1992, 43.

² See below, for other formulations of this right under the terms "healthy" or "satisfactory" environment, for example.

³ As J. Donnelly says, the evolution of human rights is "gradual and largely incremental", *Universal Human Rights in Theory and Practice*, (1989), 223.

⁴ For some of the initial academic approaches, see P. Gormley, *Human Rights and Environment: The Need for International Cooperation* (1976), Uibopuu, *The Internationally guaranteed Right of an Individual to a Clean Environment*, 1 Comparative Law Yearbook 101 (1977); P. M. Dupuy, *Le droit à la santé et la protection de l'environnement*, in *Colloque de l'Académie de droit international: Le droit à la santé en tant que droit de l'homme*, La Haye, 27-29 juin 1978, Sijthoff 1979, 350. More recently, see P. Kromarek, ed., *Environnement et droits de l'homme*, UNESCO, Paris 1987; P. Gormley, *The Legal Obligation of the International Community to guarantee a Pure and Decent Environment: The Expansion of Human Rights Norms*, 3 Georgetown International Environmental Law Review 85 (1990); A. Kiss, *Le Droit a la conservation de l'environnement*, 2 Revue universelle des droits de l'homme 12 (1990), 445; Canjado Trindade, *The parallel evolutions of international human rights protection and of environmental protection and the absence of restrictions upon the exercise of recognized human rights* 13 Revista del Instituto Interamericano de Derechos Humanos 35

sceptics of the nature of human rights; as well as among the defenders themselves, who hold different views on its content and implementation. This indicates that there is still some way to go in the path to formal recognition and common definition of this right to an adequate environment.

2. THE LEGAL RECOGNITION OF THE RIGHT TO AN ADEQUATE ENVIRONMENT IN PROGRESS

Particularly since the 1970s modern constitutions begun recognizing the existence of environmental rights⁵. International environmental law and human rights instruments also provided the foundations to guarantee such a right for all humankind.

With regard to international law, at a first stage of development, international human rights instruments established implicit convergences between human rights and the environment⁶. Already the Universal Declaration on Human Rights of 1948 established the theoretical basis for recognition of an implicit human right to an adequate environment. Later on, the 1966 Covenant on Economic, Social and Cultural Rights referred to conditions which would include an adequate environment in order to guarantee a "general welfare in a democratic society" (article 4), a safe and healthy working conditions (article 7), the right of everyone to an adequate standard of living (article 11.1), and the obligation to improve all aspects of environmental and industrial hygiene (article 13.2.b)⁷.

From the late 1980s regional human rights instruments have explicitly recognized the right to the environment. The first was the African Charter for Human and People's Rights, which stated that "all peoples have the right to a general satisfactory environment favourable to their development"⁸. The Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights proclaims that "everyone has the right to live in a healthy environment and to have access to basic public services" and establishes for States the obligation to promote the protection, preservation and improvement of the environment. Other human rights regimes, such as those operated by the European Commission and the European Court of Human Rights, and by the United Nations Human Rights Committee - with regard to the Covenant on Civil and Political Rights-, have not expressly stated such rights, but their case law reflects increased sensitivity towards recognition of environmental rights through the protection of rights already codified.

At the European level, the European Court of Human Rights has guaranteed protection of the right to privacy as a result of noise pollution and fumes, and, by the same token, has limited property rights in favour of protection of the general public interest in the conservation of

(1991); D. Shelton, *Human Rights, Environmental Rights, and the Right to the Environment*, 28 *Stanford Journal of International Law* 103 (1991); M. Thorne, *Establishing Environment as a Human Right*, 19 *Denver Journal of International Law and Policy* 301 (1991); G. Handl, *Human Rights and the Protection of the Environment: A Mildly Revisionist View*, in Canjyado Trindade, *supra* note X, at 117; J. T. McClymonds, Note, *The Human Right to a Healthy Environment: An International Legal Perspective*, 27 *New York Law School Law Review* 583 (1992); M. J. Kane, *Promoting Political Rights to Protect the Environment*, 18 *Yale Journal of International Law* 389 (1993); M. Leighton Schwartz, *International legal Protection for Victims of Environmental Abuse*, 18 *Yale Journal of International Law* 355 (1993).

⁵ See Kiss (1990), *supra*.

⁶ A. Kiss, *Sustainable Development and Human Rights*, in Canjyado Trindade (1992), 29, *supra*, at 34.

⁷ See generally, Kiss (1992), *supra*.

⁸ See African Charter, in P.Sands, *Principles of International Environmental Law*, Manchester University Press, 1996, vol. II.

green areas⁹. The UN Human Rights Committee has taken an interesting stand on behalf of indigenous communities, recognizing their right to dispose freely of their natural wealth and resources as a means to guarantee the right of minorities to enjoy their own culture¹⁰.

Perhaps the most significant recent development in the international human rights arena has been the study commissioned by the United Nations Sub-Commission for the Prevention of Discrimination and Protection of Minorities on "Human Rights and the Environment". This Study was carried out by Special Rapporteur **Fatma Zohra Ksentini** over four years, and concluded with a Final Report in 1994¹¹. The **Ksentini** Report gathered national and international legal data on the link between human rights and the environment, and provide an insight on questions relevant these relationship, such as development rights, the rights of indigenous peoples and the right to peace and security. One of the most interesting outcomes of the **Ksentini** Report was its presentation of the "Draft Declaration of Principles on Human Rights and the Environment", which is the first international attempt to spell out the content of environmental rights¹².

Several international environmental law instruments, albeit not binding, have also recognized this link between the need to protect the environment and to guarantee a life of health, dignity and well-being. The Stockholm Declaration proclaimed in 1972 that "man has the fundamental right to freedom, equality and adequate conditions of living in an environment of a quality that permits a life of dignity and well-being". The United Nations General Assembly also took account of this pervasive link in resolutions such as the World Charter for Nature¹³ and the Declaration on the Economic Rights and Duties of States. The 1992 Rio Declaration does not demonstrate significant progress in the recognition of the intrinsic link between humans and their environment¹⁴.

Perhaps the most compelling statements in favour of the recognition of a right to an adequate environment come from comparative law. Building on existing research¹⁵, the **Ksentini** Report provides evidence of more than 60 national constitutions which expressly or implicitly recognize the right to environment under different formulations¹⁶. In other cases, constitutional recognition is provided indirectly through the recognition of other rights, such as the right to health or to well being. The latter case is more frequent with older Constitutions -in most ca-

⁹ **Benito de Castro**, *Los Derechos Económicos, Sociales y Culturales*, Universidad de León, Secretariado de Publicaciones, 1993, 136.

¹⁰ Communication 167/1984 (*Ominayak and Lubicon Lake Band v. Canada*), UN Doc. CCPR/C/38/D/167/1984, Annex II (Decision of 28 March 1990). Regarding environmental rights of indigenous peoples, see also *Yanomami case*, resolved by the Interamerican Commission on Human Rights. Case 7615, IACHR 24, OEA/Ser. L/V/11.66, doc. 10 rev. 1 (1985).

¹¹ The process to develop a study begun in 1989 (see UN Doc. E/CN.4/Sub.2/1989/58, at 71). In 1991 the Preliminary Report was submitted (E/CN.4/Sub.2/1991/8), followed by two yearly Progress Reports (E/CN.4/Sub.2/1992/7 and E/CN.4/Sub.2/1993/7). The Final Report was presented before the Sub-Commission in 1994 (E/CN.4/Sub.2/1994/9) ("Final Report"). For a discussion on this study and its results, see **A. Fabra & N.A.F. Popovic**, *Lawmaking in the United Nations: the UN Study on Human Rights and the Environment*, 3 RECIEL 197 (1994).

¹² See Final Report, Annex I, p. 74. For a commentary on the Draft Declaration, see **N.A.F. Popovic**, *In Pursuit of Environmental Human Rights: Commentary on the Draft Declaration of Principles on Human Rights and the Environment*, 27 Columbia Human Rights Law Review 487 (1996).

¹³ UNGA Res. 37/7 (28 October 1982).

¹⁴ See it, in **P.Sands**, *Principles of International Environmental Law*, Manchester University Press, 1996, vol. II.

¹⁵ See supra **Kiss** (1990) and **Shelton**.

¹⁶ See Final Report, supra, Annex III, p. 81.

ses prior to the 1970s-, such as the Italian Constitution of 1948. Despite lack of express recognition, Italian jurisprudence has related the right to the environment with other constitutionally recognized rights, such as the right to health, to the protection of the historical and artistic heritage, or to private entrepreneurship in a way that is not contrary to safety, liberty and human dignity¹⁷.

In Germany, the right to an adequate environment was not included in the Fundamental Law, although it had also been protected through other constitutional rights. Finally, after a process of heated political disputes, the 1994 amendments to the Fundamental Law refers to the obligation of the State to protect the natural conditions which are necessary to life¹⁸.

In line with more modern constitutions, the 1975 Greek Constitution establishes in article 24.1 that the protection of the natural and cultural environment is a State obligation¹⁹. The 1976 Portuguese Constitution and the 1978 Spanish Constitution contain similar provisions, which state the existence of a right to an environment which is "healthy and environmentally balanced" or "adequate for the development of the person". Both constitutions classify the right to environmental under the category of economic, social and cultural rights, which are entitled to less jurisdictional protection than civil and political rights²⁰.

In other regions, the 1988 Constitution of Brazil recognizes the right to an adequate environment as a right that belongs to present and future generations²¹. Also in unambiguous terms, article 79 of the 1991 Colombian Constitution states that "every individual has the right to enjoy a healthy environment. The Law shall guarantee the participation of the community in decisions that may affect it. It is the duty of the State to protect the diversity and integrity of the environment, conserve areas of special ecological importance and promote education for the attainment of these ends."

It is relevant with regard to all these constitutional developments that legal systems are slowly relying on formal recognition of these rights to address situations of violation of environmental law and environmental harm in general. National jurisprudence is developing very progressively, for example in Latin America²², and sometimes more rapidly than the States' legislators themselves, recognizing rights not formally protected under the constitution²³.

¹⁷ Gianpaolo Peccolo: *Le Droit a l'Environnement dans le Constitution Italienne*, *Revue Juridique de l'Environnement*, 4/1994.

¹⁸ Michael Bothe: *Le Droit a la Protection de l'Environnement en Droit Constitutionnel Allemand*, *Revue Juridique de l'Environnement*, 4/1994.

¹⁹ Glykeria Sioutis: *Le Droit de l'Homme a l'Environnement en Grèce*, *Revue Juridique de l'Environnement*, 4/1994.

²⁰ José Carlos Gómez da Silva: *Human Rights in the Portuguese Constitution*. *Revue Juridique de l'Environnement*, 4/1994. With regard to the Spanish system, see D. Loperena Rota, *El derecho al medio ambiente adecuado*, Civitas 1996.

²¹ Gilberto D'Ávila Rufino: *Le Droit de l'Homme a l'Environnement dans la Constitution de 1988 du Brésil*, *Revue Juridique de l'Environnement*, 4/1994.

²² See some very interesting examples of judicial implementation of the right to an adequate environment in A. Fabra, *Enforcing the right to a healthy environment in Latin America*, 3 RECIEL 215 (1994).

²³ See *Minors Oposa v. Secretary of the Environment and Natural Resources*, G.R. No. 101083, 30 July 1993, reproduced in 33 International Legal Materials 173 (1994) with regard to intergenerational environmental rights. See decision of the Supreme Court of Costa Rica (Sala Constitucional de la Corte Suprema, Voto No. 3705, 30 July 1993) concerning the use of a cliff as a waste dump, whereby the Court stated that "life is only possible when it exists in solidarity with nature, which nourishes and sustains us . . ." in A. Fabra, supra, 216.

3. THE NEED TO DISTINGUISH THE RIGHT TO AN ADEQUATE ENVIRONMENT FROM THE RIGHT TO ENVIRONMENTAL PROTECTION

It is particularly difficult to argue in favour of the existence of a human right to an adequate environment as we need to manage two concepts that are difficult to define in themselves: *human rights* and *environment*.

With regard to the environment, all the time scientists are understanding and explaining what it is more clearly. Therefore, we could state that the human right to an adequate environment is exercised with regard to certain physical and biological parameters that can be identified currently in our planet. These parameters have permitted our appearance and development as a species and, thus, it is necessary for our survival to keep them essentially unaltered. When looking at human rights in this context, we are referring to the legal régime that allows protection to human beings when they realize that these parameters may be altered as a result of human activity and may directly or indirectly create a risk to life, particularly to human life.

From an ecological perspective, these parameters which are necessary for human life are the result of the interaction of different elements of the natural world, particularly air, water, soil and animal and plant species. It is necessary to keep a balance between species and their biological links in order to maintain these parameters.

Other approaches could even lead us to recognize that the need to protect the biosphere is not only to ensure the survival of our species, but, rather, that the assertion of the existence of a right to an adequate environment could dominate or effect all other rights. Some consider that the next level of social organization could lead us to the Environmental State, instead of the current Social or Welfare State²⁴.

Either approach to environmental rights is legitimate. However, theories based on the last environmental concept may lead to confusion and render existing legal instruments inoperative. We value the intellectual challenge and the ethical dimension of those proposals which intend to go beyond the existing social order, but also recognize that these are ambitious proposals which will take many years to consolidate. We should, thus, separate ethical and political propositions from urgent needs to which Law needs to respond without delay. We shall focus on the latter and consider the right to an adequate environment, as the means by which our legal culture can respond to the current urgent needs.

We are aware that there is no homogenous interpretation and categorization of human rights. We are familiar, though, with the classification of rights into three different groups, whereby human rights are divided in civil and political rights; economic, social and cultural rights; and, as the "third generation", the so-called "solidarity" rights such as the right to development, the right to peace, and, also, the right to an adequate environment²⁵. Some authors point to even a fourth generation of rights²⁶.

The first generation refers to individual rights, which can be identified with those rights recognized in the 1789 Declaration of Rights of Man and of the Citizen. The second related to

²⁴ Vicente Bellver Capella: *Ecología: de las razones a los derechos*, Ed. Comares. Granada. 1994

²⁵ K. Vasak: *Le Droit International de Droits de l'Homme*; 1972. For some views on the evolution of human rights and some critical perspectives on this "generational" approach, see P. Alston, *A Third Generation of Solidarity Rights: Progressive Development or Obfuscation of International Human Rights Law*, 29 *Netherlands International Law Review* 307 (1983); Meron, *On a Hierarchy of International Human Rights*, 80 *AJIL* 1 (1986).

²⁶ Vasak & Benito de Castro, cit.

economic, social and cultural rights. As stated by **Benito de Castro**, in accordance with “the chronological moment in which they appeared” these rights are, among others: the right to work, to social security, to public assistance, to freedom to work, to association, to hold strikes, to education, to the special protection of the family, etc.²⁷. **Ara Pinilla** considers these rights as “credit rights”, as they can be claimed before the Public Administrations. With regard to these rights, the Public Administrations are not only responsible for guaranteeing the security of its citizens, but also for achieving social objectives²⁸.

With regard to the right to an adequate environment authors have labelled it, perhaps too rapidly, as a third generation right²⁹. There is certainly no dispute about the moment when this right has been recognized as a human right and about the “solidarity” required to guarantee it. However, we should point out that solidarity is an element of environmental policy or, in other words, of the collective action to protect the environment, but that the right to an adequate environment is a right that can be exercised individually by any human being with out no intermediation of public administrations.

The so-called second and third generation rights require intervention from collective public and private entities to guarantee them, while other rights just need the respect and protection of the State. We can distinguish therefore two categories of rights: those that only require respect, which are necessary for any society; and those that amount to stages of civilization, which may be updated as economic and social progress takes place.

The right to an adequate environment is not the result of social development, but a fundamental requirement for such progress. This right is linked to human life itself: *ubi homo, ibi societas; ubi societas, ibi ius*. An adequate environment is obviously a prior requirement of law itself: without an adequate environment, there are no humans, nor society, nor law. Therefore, the formal recognition of this right takes place in two senses: on the one hand, it is recognized as a fundamental human right; on the other, there is an obligation placed on Public Administrations - and their legal instruments - to preserve and protect it. The same process takes place with regard to the right to life. It is recognized as a fundamental right and, in addition, public authority guarantees it.

The right to an adequate environment is not the result of a certain level of social development, as universal health care may be, for example. On the contrary, its enjoyment comes from life itself, from Nature; not from human activity. Only its denial depends upon the social system in which this right should be enforced, without altering, however, the ontological relationship between humans and the environment, and its legal consequence: the right to an adequate environment.

The appearance and evolution of human rights responds to the permanent internal struggle of human beings - individually or collectively - between a selfish instinct based on the force of power and an altruistic instinct based on ethical principles³⁰. The opposition between equality and inequality in a social and legal equilibrium has been gradually inclining towards

²⁷ **Benito de Castro**, cit., 136.

²⁸ **I. Ara Pinilla**: *Los Derechos Humanos de Tercera Generación en la Dinámica de la Legitimidad Democrática*, en *El Fundamento de los Derechos Humanos*, por **J. Muguierza y otros**, Ed. Debate.

²⁹ **R. Martín Mateo**, *Tratado de Derecho Ambiental*, Vol. I, Ed. Trivium, 98-99; **V. Bellver Capella**: *Ecología: De la Razón a...*, cit., 270.; **J. Jordano Fraga**: *La Protección del Derecho a una Medio Ambiente Adecuado*, Ed. J.M. Bosch, 1995, 132-134.

³⁰ **R. Martín Mateo**: *El hombre una especie en peligro*, Ed. Campomanes Libros, Madrid, 1993.

values which favour equality. The development of different generations of rights responds to this evolution, which goes from the recognition of the legal personality and basic dignity of the person, to the recognition of those rights which provide material content to fundamental rights, and through collective efforts channelled through public institutions protect the poorest people.

Enjoyment of the right to an adequate environment, is different from other rights such as the right to education which requires the intervention of public authority for its existence. It does not need such action from Public Administrations, as it is Nature itself that provides the biospherical parameters. State activity becomes limited to the protection of what already exists. We can identify the same relationship with regard to the right to life, which is not provided, but only guaranteed by the State. In this sense, the right to an adequate environment is very similar to civil and political rights because in both cases the State needs to recognize them and prevent their violation, but does not necessarily require any positive action.

With regard to the environment, Public Administrations are obliged to prevent human, as well as natural, actions from altering the parameters required by our species - and by others that share the Planet with us. Even if our disappearance would permit the appearance of new species, we do not act to allow this. Rather, we hold an ontologically unavoidable position that favors our protection and that of those species which are useful to our survival. Therefore, we should try to maintain the biospherical parameters that will delay our eventual disappearance³¹.

Environmental protection, as a collective action, also has a solidarity dimension, as future generations depend on our environmental heritage. Therefore, those who cannot hold rights today may be able to have them when they are born, as long as our collective protection of the environment permits to do so. This is one of the messages contained in the multi-faceted concept of sustainable development.

It is important to be aware of the distinction between the collective action carried out through public institutions and the right to an adequate environment. This right is not exercised before Public Administrations; only the right to the protection of the environment is exercised before Public Administrations. They are rights of a different nature which should be distinguished at least at a theoretical level. The same distinction takes place between the right to life and the right to medical assistance, which are rights related between themselves but of a different nature. They belong to different generations in their recognition as human rights. With regard to the right to an adequate environment, it belongs to a first generation of human rights, while the right to have public actions for environmental protection belongs to social or to solidarity rights.

The State should protect the biosphere that has always existed and continues to exist; it does not need to achieve a "perfect" biosphere. This is different from the protection of social rights, which attempt to achieve an equality which never existed by using compensatory mechanisms. The biosphere is not the result of a solidary effort by our species, as social and third generation rights are.

To take an example, the Spanish Constitution contains an interesting reference to the right to an adequate environment which implicitly makes the hierarchical distinction referred to above. Its article 45 refers in the second and third paragraphs to the right to the protection of an adequate environment which may be exercised before the State. In its first paragraph, instead, it makes a simple and direct recognition of a right to the environment which is ade-

³¹ Demetrio Loperena Rota: *El Derecho al Medio Ambiente Adecuado*, Ed. Civitas, 1994, 25.

quate to the development of the person. Such latter recognition is independent of the successful action that Public Administrations may take in implementing provisions stated in paragraphs 2 and 3, and may be separated from them. The legislator placed article 45 in Chapter III, of Title I, which refers to principles of social policy. This not the correct place for such a right, as from a systematic perspective it should be included in Section I of Chapter II, which refers to fundamental rights

Perhaps our approach may seem excessively theoretical, but we believe it is necessary to carry out effective actions. In any event, we can deduce from positive legal systems that the right to the protection of the environment by public authorities is not equivalent to the right to an adequate environment. Thus, the recognition of environmental crimes in national legal systems demonstrates the need to protect a right, regardless of the positive protection granted by the Public Administrations. It is not just an action before the public institutions. Even more, civil law protects aspects of the right to an adequate environment without any need for governmental intervention. For practical reasons, however, the right to environmental protection may be absorbed by the right to an adequate environment, but it should never be confused with the latter. Under no circumstance it should be reduced to a restrictive interpretation based on the protective action of Public Administrations.

We should ask ourselves some further questions: when does human action violate the right to an adequate environment? When are biospherical parameters altered? Is it possible to develop practical criteria for its appreciation?

It is evident that there is a violation of environmental law when there are some positive legal criteria which are not respected. It is necessary however to establish some criteria which guide judges and legislators when identifying those situations which may endanger such biospherical parameters. Alteration of such parameters may generally involve conditions which are of such an intensity that could not be caused by an isolated human action. A very large but single emission of CO₂, or the massive poisoning of fisheries in a river will not alter the biological parameters of the planet, as the capacity of nature to purify itself is much more powerful than any individual action.

To assess whether a human action violates or not the right to an adequate environment we need to appreciate its consequences under the hypothesis that all human beings would have made the same use of the biosphere. Scientists would easily appreciate whether the biosphere would or would have not been altered. If the biosphere would have been altered, we would confront an illegal action, subject to punishment. We should then determine the responsibility, based on whether the action was individual, or the result of a collective action from a local, regional or national community. In this regard, we should refer to the principle of equality in the exercise to the right to an adequate environment. In simple words, all human beings have the same quota of the biosphere's capacity to depurate and regenerate itself. However, this equality principle is not complied within the international community, as the CO₂ emissions from a State can be absorbed by the atmosphere just because other States do not release into the air the same amount of pollutants.

We are all aware that economic development in the North is based, among other causes, on the inferior per capita pollution and use of natural resources of developing countries. If the latter would catch up with industrialized countries, atmospheric parameters, for example, would have been so severely altered that they would probably endanger the survival of human beings. We have borrowed without authorization from them and compensation to them an environmental credit that does not belong to us and that we should return. Restitution in this case should be accompanied of compensatory measures, to attend a basic sense of justice.

Finally, we should point out that despite its recent formal recognition, enjoyment of this right is not new. Our species and its individuals are alive because they enjoy an adequate environment. Lack of previous recognition was due to its unrestricted enjoyment, which did not require legal protection. We do not regard the right to laugh or to hear as a right that requires formal recognition. If we need to recognize the right to an adequate environment formally is because there is a risk that we may not be able to continue to enjoy it peacefully.

4. CONCLUSION

We have been able to establish that international law has gradually recognized the right to an adequate environment. Equally, national legislation has been incorporating its implicit or express recognition. The rights legally formulated, however, are sometimes different and we should distinguish between the right to directly derive enjoyment from biospherical parameters and the right to environmental protection, which is a right to be implemented by Public Administrations. Perhaps confusion between these two rights is what prevents the right to an adequate environment receiving the maximum legal protection.