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HUMAN RIGHTS AND SCIENTIFIC AND TECHNOLOGICAL DEVELOPMENTS

Proposals for a study of the problem of the environment
and its relation to human rights

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Sub-Commission decision 1989/108

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INTRODUCTION

1. In decision 1989/108 dated 31 August 1989, adopted without a vote, the Sub-Commission on Prevention of Discrimination and Protection of Minorities asked Ms. Fatma Ksentini to prepare, without financial implications, a concise note setting forth methods by which a study could be made of the problem of the environment and its relation to human rights.

2. The above decision also indicates that the information on human rights and the environment provided to the Sub-Commission at its forty-first session by Friends of the Earth, the Sierra Club and the Association of Humanitarian Lawyers, and by certain members, together with the Environmental Perspective to the Year 2000 and Beyond (General Assembly resolution 42/186, dated 11 December 1987) justified consideration of whether the Sub-Commission should study this issue. The Sub-Commission also decided to request the Secretary-General to invite Governments, United Nations bodies concerned, specialized agencies, intergovernmental organizations and non-governmental organizations to submit relevant information and observations, preparatory to the working paper.

3. It should also be mentioned that on 6 March 1990 the Commission on Human Rights adopted resolution 1990/41, entitled "Human rights and the environment", in which it affirmed its awareness of the increasing environmental degradation and underscored the link between the preservation of the environment and the promotion of human rights. Moreover, the Commission welcomed the decision of the Sub-Commission to have a note prepared for its forty-second session on methods by which a study on the problems of the environment and its relation to human rights could be made.

4. It should also be mentioned that, although this is the first time the Sub-Commission has considered environmental problems as a whole and in relation to human rights, it has already dealt with some aspects of the problem, such as the movement and dumping of toxic and dangerous products and wastes (resolution 1988/26, dated 1 September 1988). 1/

5. Debates within the Sub-Commission and the Commission together with written observations submitted to the Special Rapporteur pursuant to resolution 1989/108 2/ have focused on the following points:

(a) A universal awareness of the scale, seriousness and complexity of environmental problems;

(b) The need for appropriate national, regional and international measures to address such problems;

(c) The manifest and/or close link between the environment and human rights, although the nature of the link is not always defined;

(d) However, some human rights violations are allegedly the causes of or factors in environmental degradation;

(e) Deterioration of the environment affects the enjoyment of human rights (life, health, work, information, participation, self-determination, the right to development, to peace and security, and so on ...);

(f) Specific regional and other development projects were advanced as illustrations of environmental degradation and infringement of human rights; 3/

(g) The Sub-Commission and the Commission on Human Rights should focus greater attention on the environmental problems that affect human rights.

6. At this stage it does not seem possible, within the confines of this brief note, to make an exhaustive analysis of the statements in the Sub-Commission, in the Commission on Human Rights or the communications submitted to the Special Rapporteur. These contributions provided valuable help in approaching the task and would make an extremely useful conceptual contribution to a study if the Sub-Commission decided to undertake one.

7. In view of the constraints that affect any brief note on a broad issue entailing complex factors and with a changing legal basis, it is impossible for the contents of this document to be seen as other than a set of working hypotheses that require deeper consideration, shaping of ideas and fine-tuning of the proposed approach.

8. Within the context of this preliminary note, the Special Rapporteur will none the less endeavour to identify the subject of a possible Sub-Commission study by putting forward a number of considerations on environmental issues in relation to human rights, together with some methodological aspects of the preparation of such a study.

I. CONSIDERATIONS REGARDING THE PROBLEM OF THE ENVIRONMENT IN RELATION TO HUMAN RIGHTS

A. General

9. For many years environmental problems were almost exclusively considered from the standpoint of the pollution in one part of the world, i.e. the industrialized countries. 4/ Acknowledgement of the link between the environment and human rights was fostered by an awareness of the global, complex, serious and multi-dimensional nature of environmental problems. Moreover, attention is being focused more and more on environmental deterioration wherever it occurs, on understanding its causes and on examining its repercussions and the risks involved.

10. This new attitude has the virtue of going beyond the limited framework and narrow vision that previously circumscribed environmental problems, and it tackles the issue from a universal angle, involving a global economic, social and cultural approach to which it adds the human dimension (the human right to a healthy and balanced environment and to "sustainable development"). 5/

11. Admittedly, this approach needs to be perfected - and this will certainly be one of the main objectives of the forthcoming United Nations Conference on Environment and Development scheduled for 1992 - particularly by taking into account the concerns of the developing countries in view of their vulnerability to damage to their ecosystems by internal as well as external

agents. However, the progress made towards understanding such phenomena that threaten our planet and even its very existence has to be acknowledged. These phenomena affect:

(a) The natural habitats (water, air, atmospheric pollution; the seas, oceans and rivers; destruction of the ozone layer, climatic change, global warming attributable to the greenhouse effect, etc.);

(b) Natural resources (desertification, deforestation, soil erosion, the extinction of certain species, degradation of flora and fauna, exhaustion of non-renewable, and particularly energy, resources);

(c) Human habitats and settlements (housing, town-planning, demography, etc.);

(d) Human beings (living conditions, working conditions, health, etc.).

12. Nowadays it is widely recognized that it is impossible to separate environmental problems from development problems - with their exigencies but also their constraints - and the problems of man's future as both agent and beneficiary of the right to development; moreover, human beings bear particular responsibility for preserving and managing the common heritage of mankind, which is also the heritage of future generations.

B. Outline of the emergence of a right to the environment

13. As early as 1968, in resolution 2398 (XXII), dated 3 December 1968, the United Nations General Assembly underscored the consequent effects of impairment of the quality of the human environment on the condition of man and on his enjoyment of basic human rights. In the same year, the Proclamation of Tehran drew attention to the fact that, while recent scientific discoveries and technological advances had opened vast prospects for economic, social and cultural progress, such developments might nevertheless endanger the rights and freedoms of individuals and would require continuing attention (A/CONF.32/41, Proclamation, para. 18). The Stockholm Declaration of 16 June 1972 went on to recognize the relationship between the environment, man and his basic rights, even the right to life itself.

14. Many documents have since been adopted by international, regional and national bodies to strengthen the notion of the right to the environment and underscore its interdependence with other human rights (the Declaration on Social Progress and Development adopted in General Assembly resolution 2542 (XXIV), dated 11 December 1969; the Charter of Economic Rights and Duties of States; 6/ United Nations environmental programmes, including resolution 42/186, dated 11 December 1987, relating to the Environmental Perspective to the Year 2000 and Beyond; 7/ General Assembly resolution 37/7, dated 28 October 1982, proclaiming the World Charter for Nature).

15. Many multilateral treaties deal with environmental protection and some of those relating to the limitation or prohibition of weapons and weapon tests (in particular tests of chemical and nuclear weapons) mention, at least implicitly, the need to protect the environment and contain provisions mentioning the dignity or well-being of man, health, or the general interest and thus establish an indissoluble link between the environment and human rights.

16. As to the regional level, in the African Charter on Human and Peoples' Rights article 24 stipulates that "all people shall have the right to a general satisfactory environment favourable to their development". Mention should also be made of the 1975 Final Act of the Conference on Security and Co-operation in Europe, not forgetting the numerous initiatives and proposals made in the Council of Europe to reinforce international machinery for protecting environmental rights and compensating victims.

17. The activities undertaken by UNEP, WHO, ILO, UNESCO & other intergovernmental and non-governmental institutions and the standards developed by them have contributed to the emergence of a genuine set of rules that lay the foundations for a right to the environment.

C. Conceptual aspects

18. The demand for a healthy and balanced environment has facilitated the transition from environmental law to the right to the environment. However, this concept remains imprecise without reference to a series of objectives that involve the idea of environmental conservation and protection of the fundamental rights of man and of his dignity.

19. The main conceptual issue that could be raised in respect of any study of the environment and human rights is the definition of the notion of a healthy and balanced environment, a definition which is all the more important in that it provides a yardstick against which infringements of human rights in relation to the environment can be measured.

20. Another issue is the linkage between the right to the environment and the other human rights. Is it possible directly to claim a right to the environment and any other ecological rights that might arise therefrom? Alternatively, is it necessary to prove that damage to the environment also affects a right that is already guaranteed? Once this has been established, what rights are likely to be affected by damage to the environment? Rights of the individual or collective rights or both? Civil rights, economic rights or all aspects of rights?

21. What position do ecological rights occupy within the hierarchy of human rights standards? Are they rights from which no derogation is possible? If not, what derogations would be acceptable? Are they rights subject to restriction? What restrictions would be permissible?

22. What would be the nature of such rights? Would they apply immediately? Are they "programmable" rights (i.e. rights to be implemented gradually such as economic rights, rights linked to development, etc.)?

23. What would be the object of ecological rights? Should the object of conservation of nature be man, since such conservation is warranted only on the grounds of the interests of mankind, or should the object cover all the elements of the biosphere as a whole, including the species, resources and the other components of nature? The list of human rights likely to be affected by environmental damage might vary, depending on how this question is answered.

24. In any event, it would be hard to deny that a right to the environment does exist. This right is an integral part of the set of norms that has been developed to protect the dignity of man and to promote and protect his rights. In this respect, it adds a new dimension to human rights and rounds them out. Consequently, it occupies a natural place in the category of "third generation" rights that adopt a multi-dimensional view of existence and restore to both individuals and peoples their rightful prerogatives and try to satisfy their legitimate aspirations.

II. METHODOLOGICAL CONSIDERATIONS FOR THE PREPARATION OF A STUDY

A. Topics on which the study might focus

25. In view of the scale, diversity and complexity of environmental problems, a descriptive study of them would be beyond the scope of the Sub-Commission's activities and might overlap with the work and studies carried out by other United Nations bodies. However, a general examination of the major features of environmental problems would make it possible to identify the risks they entail for human rights.

26. Particular emphasis could be laid on the essential factors involved, in particular the following: pollution of the natural environment, problems linked to natural resources, development problems, aspects linked to human habitats and settlements, and the rights of the individual.

27. The study should mainly try to highlight the relationship between environmental problems and human rights issues. To that end, a close examination of conceptual aspects could prove valuable (environmental law and the right to the environment; the right to the environment, ecological rights and human rights, etc.). As human rights may be affected by environmental problems, those rights that are likely to come into conflict with the requirements of environmental protection could be systematically analysed.

28. Few international human rights instruments include specific environmental provisions. However, many articles could be applied from an ecological angle. An analysis of the relevant articles of the following instruments could be undertaken:

(a) Universal Declaration of Human Rights

29. The fifth preambular paragraph (worth of the human person; social progress; better standard of life). Article 22 ("Everyone ... is entitled to realization ... of the economic, social and cultural rights indispensable for his dignity and the free development of his personality"). Article 24 (the right to rest and leisure). Article 25 (the right to an adequate standard of living). Article 28 ("Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.").

(b) International Covenant on Economic, Social and Cultural Rights

30. Article 1 (the right of peoples to self-determination and freely dispose of their natural wealth and resources). Article 7 (a decent living, safe and healthy working conditions, rest and leisure). Article 11 (the right to an adequate standard of living, to be free from hunger; programmes to improve methods of production, conservation and distribution of food; disseminating knowledge of the principles of nutrition; measures to achieve the most efficient development and utilization of natural resources; equitable distribution of world food supplies). Article 12 (the right to health; steps to be taken for the healthy development of the child, the improvement of all aspects of environmental and industrial hygiene). Article 15 (the right to enjoy the benefits of scientific progress and its applications).

(c) International Covenant on Civil and Political Rights

31. Article 1 (the right of peoples to self-determination and freely dispose of their natural wealth and resources). Article 6 (the right to life). Article 7 (the prohibition of torture, cruel, inhuman or degrading treatment or punishment, medical or scientific experimentation without the consent of the person). Article 17 (arbitrary or unlawful interference with privacy or the family) and article 20 (the prohibition of any propaganda for war).

(d) The Proclamation of Tehran, article 18

(e) The Declaration on the Right to Development

(f) Convention on the Rights of the Child

32. Articles 6, 24, 27, 28 and 29 (in particular subparagraph (e): the education of the child shall be directed inter alia to the development of respect for the natural environment).

33. An examination could be made of aspects of human rights violations as causes of, or factors in, deterioration of the environment. By way of illustration, the following issues could be dealt with:

(a) Denial of the right of peoples to self-determination and freely dispose of their natural resources, and the harmful environmental repercussions (in particular the exhaustion of non-renewable resources; outward-oriented economies entailing a disruption of the ecological balance, soil erosion, deforestation, etc.);

(b) Failure to achieve the right to development, and its environmental consequences;

(c) The rights of indigenous peoples, the ecological requirements and constraints of development; 2/

(d) Violations of the right to popular participation, to the freedoms of association, assembly, expression and information as restrictions to the right to a healthy and satisfactory environment.

34. The relationship between the environment and human rights may also be considered by examining the effects of environmental degradation on the enjoyment of human rights:

(a) Particular attention could be focused on the right to life, not only on account of its fundamental nature as the source of all other human rights, but also on account of its extreme vulnerability to ecological hazards; 10/

(b) The right to health, healthy living and working conditions, to housing, protection of privacy and the family, to leisure, to an adequate standard of living, to healthy food, to information, to knowledge, and so forth.

35. Specific topics could be considered, such as:

(a) Non-discrimination and environmental problems (development plans favouring a region or submitting a sector of the population to unbearable ecological risk, etc.);

(b) The principle of equality and vulnerability to ecological risks, to environmental degradation and to natural disasters;

(c) Protection of pregnant women and of children from environmental dangers.

36. Particular attention could be paid to the acceptable and unacceptable limits that might define the requirements for a right to a healthy environment and to the enjoyment of other human rights. In turn, development problems could be pinpointed from the standpoint of environmental requirements.

37. A comparative study could be made of international, regional and national norms in order to specify the legal foundations of the right to the environment, the way in which it is exercised and the guarantees attaching to it. In this connection, it would be desirable to examine whether there is adequate legal protection of the right or whether machinery for implementing it needs to be strengthened.

38. Consideration could also be given to an analysis of the duties entailed by the right to the environment and the issue of compensation for victims.

39. A set of measures designed to guarantee and protect human rights and to ensure full enjoyment of the right to the environment could be recommended.

B. Recommendations

40. If the Sub-Commission decides to conduct a study of the problem of the environment and its relation to human rights it would be desirable for it to:

(a) Clearly define the subject and determine the principal or priority issues it considers most worth developing, taking into account the diversity of environmental problems;

(b) Initiate an in-depth debate on environmental problems within the Sub-Commission;

(c) Consider ways and means of collecting information of use for the study.

41. Care should be taken to ensure that the work of the Sub-Commission does not overlap with the activities of other United Nations bodies responsible for certain aspects of the issue. In addition, action by the Sub-Commission and the possible study should be undertaken with the United Nations Conference on the Environment and Development, scheduled for 1992, in mind.

Notes

1/ See also the report prepared by the Secretary-General in accordance with Commission on Human Rights resolution 1989/42 (E/CN.4/Sub.2/1989/3).

2/ The rapporteur received some 30 written observations.

3/ See, in particular, the written contributions and reports submitted to the rapporteur, to the Sub-Commission and to the Commission on Human Rights by the Association of Humanitarian Lawyers and the Sierra Club Legal Defense Fund.

4/ "Immediately after the Stockholm Conference, perception of environmental problems was limited to a specific geographical area, the industrialized countries, and reduced to the simplest of terms, pollution". Mohammed Sahnoun, "Environnement et développement", Revue algérienne des relations internationales, No. 8, 1987, OPU, Algiers.

5/ As regards this notion of "sustainable development", see the work of the World Commission on Environment and Development, General Assembly resolution 42/186 dated 11 December 1987 and entitled "Environmental Perspective to the Year 2000 and Beyond", and the above article by Mr. Mohammed Sahnoun.

6/ "By stating that economic, political and other relations must be governed in particular by the principle of respect for human rights and fundamental freedoms, this instrument asserts the need to work towards establishing the essential conditions for protecting, preserving and improving the environment". Andrzej Makarewicz, "La protection internationale du droit à l'environnement", Environnement et droits de l'homme, edited by Pascale Kromarek, UNESCO, 1987.

7/ See, also, General Assembly resolution 36/43, dated 19 November 1981, in which the General Assembly endorses the Global Strategy for Health for All by the Year 2000 adopted by the World Health Assembly in May 1981, and General Assembly resolution 37/137, relating to the publication and updating of a list of products harmful to health and the environment.

8/ See the WHO health standards; in addition, WHO plans to prepare a study highlighting the relationship between the right to health and human rights in connection with the environment. ILO has adopted a number of conventions on the working environment, in particular Conventions Nos. 13, 115, 136, 139, 148, 155, 81 and 129, and recommendations 114, 144, 147, 97, 156 and 164. In 1980, UNESCO organized a symposium on the new human rights and has published a work entitled Environnement et droits de l'homme (see note 6).

9/ It is worth mentioning that in June 1989 ILO adopted Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries. In this Convention, the General Conference of the International Labour Organisation calls attention to the distinctive contributions of indigenous and tribal peoples to the cultural diversity and social and ecological harmony of humankind and to international co-operation and understanding, requests the adoption of special measures for safeguarding the persons, institutions, property, labour, cultures and environment of the peoples concerned and stresses the need for consultation and involvement of the peoples in decisions that affect them and the right to decide their own priorities as regards plans and programmes for development which may affect them directly. In December 1981, UNESCO adopted the Declaration of San José, which concerns the same issue.

10/ Professor Galicki (Poland) has submitted the following comments to the Special Rapporteur: "The right to life is the most important among all human rights legally guaranteed and protected by contemporary international law. On the other hand, the right to life is the one which is, most of all, connected to and dependent on proper protection of the human environment. It is because this right, like no other, may be directly and dangerously threatened by detrimental environmental measures. The right to life and the quality of life depend directly on positive or negative environmental conditions. Simultaneously, we cannot forget that this is an original right from which all other human rights derive".