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LEGAL ASPECTS ON ENVIRONMENTAL PROTECTION WITHIN THE CONTEXT OF THE CHERNOBYL CATASTROPHE

I. Introduction

On April 26, 2011 Ukraine will mark the 25th anniversary of the nuclear reactor explosion in Chernobyl, the place where the world's first severe and until now most severe civil nuclear accident took place in 1986. The explosion at the Soviet-built nuclear reactor Chernobyl sent waves of radioactive material into the air, affecting hundreds of thousands of people.

With the world witnessing nowadays the second worst nuclear disaster in the last 25 years since **Chernobyl** as the earthquake and tsunami affected **Fukushima Daiichi** nuclear power plant in Japan, it's time for us lawyers to take the floor and rethink tolerances of our legal civilization towards contemporary major environmental violations of this magnitude .

Indeed, environmental violations set a new challenge to existing human rights nomenclature, as contained in classic international instruments like the Inter — American or the European Convention of Human Rights.

Following a rights based approach to environmental protection and highlighting the emergence of the new environmental human rights theory ,we see in an environmental degradation of such a magnitude a potential violation of human rights, that can and should be followed by the general Human Rights procedures .After all, the current environmental crisis will in short produce a new human rights crisis .

As a matter of fact, there is an interrelation between environmental law and human rights law. Especially since the 1992 Rio Conference, international environmental law instruments have frequently incorporated human rights dimensions[3].

The right to a healthy and clean environment — per se — is not explicitly recognized, in all existing HR treaties**. However the right to life or the right to health is**! In addition human rights approaches

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[3] Randall S. Abate , In the need for enforceable international environmental human rights , Stanford Environmental Law Journal , 26 A 2007.

offer quasi -judicial procedures and allow injured parties to appeal to an international body for redress whereas environmental agreements do not offer satisfactory implementation mechanisms.

The (1947) UN Human Rights Commission (HRC) has already examined a number of cases that raise environmental concerns. For example the United Nations Human Rights Commission urged in the year 1995 the Ukraine to present information regarding he environmental situation following the Chernobyl disaster within the right to life framework.[1].

The most important aspect however of using any of these international HR mechanisms fir environmental protection lies in the capacity of these mechanisms to serve as a hook for the «**mobilization of shame**».

Apart from the ongoing scientific discussion about the environmental dimensions of human rights, or the human rights dimensions of environmental rights, it seems to be clear to the international scientific community, that environmental law developed out of existing human rights law , adding a new quality (dimension) to our existing democratic legal orders .

It is of particular significance here — as Prof. Randall Abates mentions[2] , «that the environmental movement in the United States itself was originally armed with only non statutory theories and after a period of development of detailed command and control legislation non statuary theories are revisited. These non statuary theories reflect a human rights based approach to environmental protection.

At least one court has been receptive to recognition of environmental rights. In the Lopez Ostra v. Spain judgment of the European Court of Human Rights, a Spanish citizen complained of noxious fumes, constant noise and contamination from a wastewater facility twelve meter from her home, which made her family's conditions unbearable and caused them to suffer serious health problems. The court noted that severe environmental pollution may affect individual's well being and prevent them from enjoying their homes in such a way as to affect their private and family life adversely (even) without seriously endanger their health.

As a member of the OAS, the United States is bound by the American Declaration of Human Rights. The United States has specifically accepted the trans boundary pollution principle, which

[1] Randall S. Abate , Climate Change (..) In the need fro enforceable international environmental human rights , Stanford Environmental Law Journal , p 15 ff

[2] Randall S. Abate , Climate Change (..) In the need fro enforceable international environmental human rights , Stanford Environmental Law Journal , p 15 ff

provides that: Under principles of international law, as well as the law of the United States, no State has the right to use or permit the use of its territory in such a manner as to cause injury by fumes in or to the territory of another or the properties of persons therein (**famous Trail Smelter Arbitration !)**

II. Human Rights and Environment

The United Nations Universal Declaration of Human Rights (UNDHR) was adopted by the General Assembly of the United Nations on the 10th December 1948. The Declaration is regarded as the most important document ever created in the 20th century and is accepted by most countries of the world. The right to a clean and healthy environment is not explicitly mentioned in the Declaration.

To mention is only Article 25 of the Universal Declaration, whereas «Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.»

Also the Inter-American Convention on Human Rights (1959), the European Convention on Human Rights (1950), the International Covenant on Economic, the Social and Cultural Rights (1976),the International Covenant on Civil and Political Rights (1976) and the African Charter on Human and People's Rights (1986).

The right to a healthy environment was first expressed as a right derivative to the right to life in the 1972 Stockholm Declaration on the Human Environment[1]. Thus the Stockholm formulation («Man has the fundamental right to freedom equality and adequate conditions of life in an environment of a quality that permits a life of dignity and well being»…) has been criticized as it limits the application of the right to a healthy environment only to health threatening situations.

The 1992 Rio Declaration placed the issue of a human right to a healthy environment squarely within the context of sustainable development. Although Rio Principle I recognizes the links between a clean and healthy environment, development and the protection of human health, it has been criticized for taking a sharply anthropocentric approach [2].

[1] Barry E. Hill , Steve Wolfson , & NicholasTarg , Human Rights and the Environment , a Synopsis and some Predictions , Georgetown International Environmental Law Review , 359 , 2003 — 2004 , p. 375ff

[2] Ibid, p. 376 , in footnote 58

Finally the Plan of Action issued at the 2002 Johannesburg Summit is «notably non – committal»[1] with respect to human right to a clean and healthy environment.

III. Environmental Justice from a Natural law Theory perspective

Environmental Justice is already a public Policy issue in the United States .According to the US Environmental Protection Agency «**environmental justice** is the *fair treatment* and *meaningful involvement* of all people regardless of race, color , national origin or income with respect to the development implementation and enforcement of environmental laws regulations and policies. *Fair treatment* means that no group of people, including rational, ethnical or socioeconomic groups should bear a disproportionate share of the negative environmental consequences resulting from industrial, municipal and commercial operations and policies. *Fair treatment* means that no group of people should bear a disproportionate share of environmental consequences (..)[2].

Meaningful involvement means that (…) potentially affected community residents have an appropriate opportunity to participate in decisions about a proposed activity, that will affect their environment and health (…) and 2.) …(…) the public's contribution can influence the agency's decision .

This definition. clearly reminds us at the preamble of the Aarhus Convention **ON ACCESS TO INFORMATION, PUBLIC PARTICIPATION IN DECISION-MAKING AND ACCESS TO JUSTICE IN ENVIRONMENTAL MATTERS ,** done at Aarhus, Denmark, on 25 June 1998 when referring to principle 1 of the Stockholm Declaration on the Human Environment and also principle 10 of the Rio Declaration on Environment and Development and also recognizing that that every person has the right to live in an environment adequate to his or her health and well-being, and the duty, both individually and in association with others, to protect and improve the environment for the benefit of present and future generations and further stating under Aricle 1 that « each Party shall take the necessary legislative, regulatory and other measures, including measures to achieve compatibility between the provisions implementing the information, public participation and access-to-

[1] Ibid p. 376

[2] US Environmental Protection Agency , Toolkit for Assessing Potential Allegations of Environmental Injustice , (Working Draft , Sept. 8 , 2003)

justice provisions in this Convention, as well as proper enforcement measures, to establish and maintain a clear, transparent and consistent framework to implement the provisions of this Convention.

As a matter of fact the notion of environmental justice as defined by the EPA or incorporated in the Arhus Convention refer to natural law doctrines when referring to fair treatment or meaningful involvement of affected community residents.

In addition the Trail Smelter Case as well as many others of the so called principles of international environmental law is an application of natural law doctrines

International law, itself was conceived by a representative of the so called idealistic school of natural law - Hugo Grotius, who based on basic nature law concepts tried to establish universally valid rules not only for human societies but also for states [1].

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ПРАВОВІ АСПЕКТИ ЗАХИСТУ НАВКОЛИШНЬОГО СЕРЕДОВИЩА В КОНТЕКСТІ ЧОРНОБИЛЬСЬКОЇ КАТАСТРОФИ

І. Вступ

26 квітня 2011 Україна відзначатиме 25-у річницю вибуху ядерного реактора в Чорнобилі, де в 1986 році мала місце перша в світі аварія на невійськовому ядерному об'єкті, яка була особливо небезпечною за своїми наслідками і залишається такою до цього часу. Вибух на побудованому Радянським Союзом Чорнобильському ядерному реакторі спричинив викиди в атмосферу хвиль радіоактивних матеріалів, які вплинули на сотні тисяч чоловік.

Сьогодні, будучи свідками другого за наслідками ядерного лиха за минулі 25 років після Чорнобилю**,** яке було спричинено

[1] See Hugo Grotius in de iure belli ac pacis