

The Development of the Right to the Human Environment : A Preliminary Survey

TOMIOKA Masashi

I. Today the right to the human environment which assures human beings of the basic conditions for their lives and development constitutes one of the most important and fundamental elements for the establishment of a new democratic international order. Under the present circumstances where many aggravating factors to the human environment still exist, the right to a decent human environment has become one of the most urgent issues within the contemporary international law. As the problems surrounding the human environment extend over a wide and complicated area, in this paper we can only briefly examine the present state of the environmental and legal problems involved, and indicate the direction of our future research.

II. The United Nations Conference on the Human Environment convened in 1972 signified an important step towards the establishment of the right to the human environment⁽¹⁾. It was the first global conference attended by both developed and developing nations to tackle environmental problems. This has been prompted by the realization of the worldwide aggravation of the human environment. It succeeded in adopting the Declaration on the Human Environment⁽²⁾ which emphasized the need for a common outlook and for common principles to inspire and guide the peoples of the world in the preservation and enhancement of the human environment.

As for the significance of the Declaration from the perspective of this paper, we can mention the following points:

* Lecturer of International Relations, Soai University; Ph. D. Candidate, Nagoya University; M. A., Nagoya University; B. A., Chuo University.

(1) See, Louis B. Sohn, "The Stockholm Declaration on the Human Environment", Harvard International Law Journal, Vol. 14, 1973, p. 431 and pp. 511-515 (The Effect of the Declaration).

(2) Report of the United Nations Conference on the Human Environment (A/CONF. 48/14/Rev. 1), pp. 3-5.

The Development of the Right to the Human Environment : A Preliminary Survey

The first point is that the Declaration recognized the existence of man's right to environment by stating that man's environment is essential to his well-being and the enjoyment of basic human rights.⁽³⁾ The Declaration also stated that it is the duty of man and all his governments to protect and improve the human environment for present and future generations.⁽⁴⁾ In addition, the Declaration pointed out the responsibility on the part of states to ensure that activities within their jurisdiction or control do not cause damage to the environment of other states or of areas beyond the limits of national jurisdiction.⁽⁵⁾

Secondly, the Declaration, by adopting a comprehensive approach, examined various kinds of problems which affect the human environment around the world.⁽⁶⁾ It dealt not only with such traditional environmental problems as the prevention of marine pollution and the safeguard of wildlife⁽⁷⁾ but also with such contemporary environmental problems as human settlement and urbanization as well as population problem.⁽⁸⁾

The third point is that the Declaration recognized the existence of the environmental problems characteristic of developing countries caused by under-development.⁽⁹⁾ To resolve such environmental problems, the Declaration also took notice of economic factors such as financial and technological assistance to developing countries⁽¹⁰⁾ and price stabilization and the insurance of adequate earnings for primary commodities and raw materials.⁽¹¹⁾

At the same time, the United Nations Conference on the Human Environment adopted Action Plan for the Human Environment⁽¹²⁾ which consists of the following six items of recommendation: (1) Planning and Management of Human Settlements for Environmental Quality, (2) Environmental Aspects of Natural Resources Management, (3) Identification and Control of Pollutants of Broad International Significance, (4) Ed-

(3) See Preamble 1, Principle 1.

(4) See Preamble 2, Principle 1.

(5) See Principle 21.

(6) See Preamble 3.

(7) See Principles 4, and 7.

(8) See Principles 15, and 16.

(9) See Preamble 4.

(10) See Principle 9.

(11) See Principle 10.

(12) Ibid. note(1), pp. 6-28.

ucational, Informational, Social and Cultural Aspects of Environmental Issues, (5) Development and Environment. For the implementation of this Action plan, the United Nations Environment Programme (UNEP) was established.⁽¹³⁾

As is clear from the brief observation above, the United Nations Conference on the Human Environment had the intention of improving the global human environment and of establishing the right to environment by proclaiming the principles in the Declaration and recommending the concrete actions in the Action Plan to be implemented by the UNEP.⁽¹⁴⁾

III. We regret to admit, however, that the development witnessed in the decade following the Declaration falls short of the expectations of the Conference. This becomes clear if we look into the Nairobi Declaration⁽¹⁵⁾ adopted by the Governing Council of the UNEP on its session of a special character in 1982.⁽¹⁶⁾ This conference was held in commemoration of the tenth anniversary of the United Nations Conference on the Human Environment for the purpose of reviewing the measures taken to implement the Declaration and Action Plan adopted at the Stockholm Conference.

The Nairobi Declaration expresses, as a whole, its serious concern about the present state of the environment around the world, though, at the same time, it rates highly some of the measures taken after the the Stockholm Conference as signifying progress in environmental sciences. Education, information dissemination and training have expanded considerably; in nearly all countries, environmental legislation has been adopted; additional governmental and non-governmental organizations have been established at all levels, and a number of important international agreements in respect of environmental co-operation have been concluded.⁽¹⁷⁾

With regard to the variety and gravity of the causes of environmental deterioration, the Nairobi Declaration states:

(13) See U.N. Doc. A/RES/2997 (XXVII), 1973.

(14) See, L. F. E. Goldie, "A General View of International Environmental Law. A Survey of Capabilities, Trends and Limits", *Académie de Droit International, Colloque Colloquium 1973*, pp. 110-123.

(15) For the content of the Nairobi Declaration, see the appendix.

(16) United Nations Environment Programme, Report of Governing Council (Session of a special character and tenth session); General Assembly, Official Records: Thirty-Seventh Session, Supplement No. 25 (A/37/25), pp. 49-51.

(17) See Paragraph 1.

The Development of the Right to the Human Environment : A Preliminary Survey

“Deforestation, soil and water degradation and desertification are reaching alarming proportions, and seriously endanger the living conditions in large parts of the world. Diseases associated with adverse environmental conditions continue to cause human misery. Changes in the atmosphere – such as those in the ozone layer, the increasing concentration of carbon dioxide, and acid rain – pollution of the seas and inland waters, careless use and disposal of hazardous substances and the extinction of animal and plant species constitute further grave threats to the human environment.”⁽¹⁸⁾

As for the economic factors aggravating the environment, the Declaration made reference to the following two points:

One is poverty and wasteful consumption patterns both of which can lead to the over-exploitation of the environment. The Declaration, therefore, states that the International Development Strategy for the Third United Nations Development Decade and the establishment of a new international economic order are among the major instruments in the global efforts to reverse environmental degradation.⁽¹⁹⁾

The other is the existence of conditions of underdevelopment. It is stated that this can be solved by a more equitable distribution of technical and economic resources within and among states.⁽²⁰⁾

The Declaration singles out war, especially nuclear war, as a social factor threatening the environment, and states that the human environment could greatly benefit from an international atmosphere of peace and security.⁽²¹⁾ It refers also to *apartheid*, racial segregation and all forms of discrimination, colonial and other forms of oppression and foreign domination as social factors of the same category.^{(22) (23)}

(18) See Paragraph 2.

(19) See Paragraph 4.

(20) See Paragraph 7.

(21) The Nairobi Conference adopted Resolution III titled “Arms and Environment” following the proposal of Mexico and Sweden. In the Resolution the Governing Council, with the recognition that war especially nuclear war will constitute a great threat to the environment, appeals to Governments and the world community as a whole to do the utmost to halt the arms race and thereby prevent a major threat to the environment. See op. cit., pp. 41-42.

(22) See Paragraph 5.

(23) See, Mostafa K. Tolba (Executive Director of the UNEP), “Prospects for the Next Decade—Reflections on the Special Meeting of UNEP”, Proceedings of the Symposium on the Global Environment – In Commemoration of the 10th Anniversary of the UN Conference on the Human Environment, June 11, 1982, Tokyo, UNEP, pp. 13-14.

The Development of the Right to the Human Environment : A Preliminary Survey

Thus, in the Nairobi Declaration, it is stated that there still exist many threats to the environment due largely to the unsatisfactory implementation of the Action Plan, and it is recognized that the principles of the Stockholm Declaration remain as valid today as they were in 1972.⁽²⁴⁾ In short, the system which was set up following the Stockholm Conference for the purpose of the preservation of the environment has not functioned effectively.⁽²⁵⁾ The Nairobi Declaration attributed the causes of ineffectiveness mainly to inadequate foresight and understanding of the long term benefits of environmental protection, to inadequate co-ordination of approaches and efforts, as well as to unavailability and inadequate distribution of resources.⁽²⁶⁾

Detailed analysis of the prevailing situation falls beyond the scope of this paper, but we can point out that the aggravation of social and economic conditions throughout the world since 1972 has been singled out on several occasions as an important background factor responsible for the current situation.

Reflecting such changes of international atmosphere, Mostafa K. Tolba, Executive Director of the UNEP, states:

“It was agreed at Stockholm that ‘poverty is the worst form of pollution’ and there was no lack of optimistic determination to deal with it.

In 1982, all this has changed - the confidence has drained. Detant has given way to increased tensions together with the threat and actual outbreaks of localised conflicts. The arms race has accelerated, nuclear arsenals are bigger, growth rates have slowed, and recession is the clear feature of a destabilized world economy. Assistance to developing countries has begun to fall off and the pollution of poverty has increased in severity.”⁽²⁷⁾

Evaluating in the final section of its report on the state of the environment during the decade following the Stockholm Conference in 1972, UNEP states as follows:

“At the Stockholm Conference it was generally assumed that the world’s system of national governments, regional groupings and international agencies had the power to take effective action, and that the limiting factors were scientific and economic. By the early 1980s there was less confidence in the capacity of natio-

⁽²⁴⁾ See Paragraphs 2, and 10.

⁽²⁵⁾ See Resolution I adopted in the Nairobi Conference titled “The environment in 1982: retrospect and prospect”, supra note (15), pp. 25-40.

⁽²⁶⁾ See Paragraph 2.

⁽²⁷⁾ Mostafa K. Tolba, “Prospects for the Next Decade - Reflections on the Special Meeting of UNEP”, supra note (17), p. 22.

The Development of the Right to the Human Environment : A Preliminary Survey

nal and international managerial systems to apply known principles and techniques, or in the effectiveness of international debates as a source of action to improve the well-being of people. The capacity of any existing economic system to bring about the necessary social and environmental developments has been challenged in many quarters, especially following the energy crisis of the 1970s. Restoration of confidence in these systems may be the greatest challenge for those seeking to improve the world environment during the 1980s and beyond.”⁽²⁸⁾

IV. Based on the foregoing observations, we must admit that the present situation of the human environment is very severe, and yet the future prospect for its improvement is not all bleak. Man's rights and government's corresponding duty to the environment as proclaimed at the Stockholm Declaration are gradually being realized in all fields of contemporary international law. For example, the United Nations, in close cooperation with UNEP and other organs, has succeeded in holding many conferences and concluding many important international agreements relating to the human environment (For example, the World Food Conference in 1974,⁽²⁹⁾ the United Nations Conference on Human Settlements in 1976,⁽³⁰⁾ the United Nations Water Conference⁽³¹⁾ and the United Nations Conference on Desertification in 1977).⁽³²⁾

The United Nations Convention on the Law of the Sea adopted in 1982⁽³³⁾ contains important provisions relating to the preservation of the marine environment. This Convention, in Part XII which deals with the protection and preservation of the marine environment, provides comprehensive regulations of all sources of marine pollution: land-based and atmospheric sources of pollution as well as such sources

⁽²⁸⁾ UNEP, "The State of the Environment 1972-1982", 1982, para. 173, p. 59.

⁽²⁹⁾ See Universal Declaration on the Eradication of Hunger and Malnutrition and Resolutions adopted by the Conference, United Nations, Report of the World Food Conference, Rome, 5-16 November 1974, pp. 1-19.

⁽³⁰⁾ See Declaration of Principles, Recommendations for national action and recommendations for international co-operation, United Nations, Report of HABITAT: United Nations Conference on Human Settlements, Vancouver, 31 May-June 1976, pp. 2-114.

⁽³¹⁾ See Mar Del Plata Action Plan, United Nations, Report of the United Nations Water Conference, Mar del Plata, 14-25 March 1977, pp. 3-81.

⁽³²⁾ See Plan of Action to Combat Desertification, United Nations, United Nations Conference on Desertification, 29 August - 9 September 1977, pp. 6-37.

⁽³³⁾ United Nations Convention on the Law of the Sea, U.N.Doc.A/CONF. 62/122, 7 October 1982.

of pollution as originating from dumping, vessel and sea-bed activities.⁽³⁴⁾ As for the enforcement measures against violations of the convention, under the conventional law of the sea the flag-state alone was entitled to exercise, the principle of multiple jurisdiction was adopted by the states with vested interest (i.e., where violations occurred: jurisdiction by respectively coastal-states, port-states and flag-states).⁽³⁵⁾

In the field of law of war, the Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques adopted in 1976 provides for the preservation of the environment at the time of war. Article 35-3⁽³⁶⁾ and Article 55, paras 1 and 2,⁽³⁷⁾ of the Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol 1) concluded in 1977 provide for the preservation of the environment at the time of war on the basis of international humanitarian law.

These are but some examples of the treaties relating to the preservation of the human environment. We believe that only through the accumulation of such treaties will it become possible to establish our rights to the environment. The most interesting one from this viewpoint is Article 19 of the Draft Articles on State Responsibility worked out by the International Law Commission in 1976.⁽³⁸⁾ In this article, massive pollution of the atmosphere or of the seas as well as genocide or invasion etc. was provided to constitute international crime.⁽³⁹⁾ This article, stating the under-

(34) See *ibid.*, Part XII, Section 5 (International Rules and National Legislation to Prevent, Reduce and Control Pollution of the Marine Environment).

(35) See *ibid.*, Section 6 (Enforcement).

(36) Article 35-3 provides as follows:

"It is prohibited to employ methods or means of warfare which are intended, or may be expected, to cause widespread, long-term and severe damage to the natural environment."

(37) Article 55 entitled "Protection of the natural environment" has the following provision:

"1. Care shall be taken in warfare to protect the natural environment against widespread, long-term and severe damage. This protection includes a prohibition of the use of methods or means of warfare which are intended or may be expected to cause such damage to the natural environment and thereby to prejudice the health or survival of the population.

2. Attacks against the natural environment by way of reprisals are prohibited."

(38) Yearbook of the International Law Commission, 1976, Volume II, Part Two (A/CN. 4/SER. 4/1976/Add. 1 (Part 2)), p. 75.

(39) Article 19 entitled "International crimes and international delicts" provides as follows:

"1. An act of a State which constitutes a breach of an international obligation is an internationally wrongful act, regardless of the subject-matter of the obligation breached.

2. An internationally wrongful act which results from the breach by a State of an inter-

The Development of the Right to the Human Environment : A Preliminary Survey

standing of the International Law Commission that the preservation of the human environment constitutes a fundamental interests for the international community, represents an important advance towards the establishment of man's right to the environment.

As we have seen above, it is indispensable for the preservation of a decent environment for humanity to eliminate such negative social and economic factors as poverty, underdevelopment and threat of war. Therefore, our struggle for the establishment of the right to the environment must constitute an integral part of our struggle towards a new democratic international order as signified by the establishment of a new international economic order and disarmament efforts. As Eric P. Eckholm writes in his interesting book, "Down to Earth", our struggle for the preservation of the decent environment constitutes but a part of our effort to create a decent world.⁽⁴⁰⁾

national obligation so essential for the protection of fundamental interests of the international community that its breach is recognized as a crime by that community as a whole, constitutes an international crime.

3. Subject to paragraph 2, and on the basis of the rules of international law in force, an international crime may result, *inter alia*, from :

(a) a serious breach of an international obligation of essential importance for the maintenance of international peace and security, such as that prohibiting aggression ;

(b) a serious breach of an international obligation of essential importance for safeguarding the right of self-determination of peoples, such as that prohibiting the establishment or maintenance by force of colonial domination ;

(c) a serious breach on a widespread scale of an international obligation of essential importance for safeguarding the human being, such as those prohibiting slavery, genocide and *apartheid* ;

(d) a serious breach of international obligation of essential importance for the safeguarding and preservation of the human environment, such as those prohibiting massive pollution of the atmosphere or of the seas.

4. Any internationally wrongful act which is not an international crime in accordance with paragraph 2, constitutes an international delict.

(40) Erik P. Eckholm, *Down to Earth*, Japanese Translation by Hiroyuki Isi and Kenichi Mizuno, Asahishinbun-Sha, 1984, p. 22.

Appendix

NAIROBI DECLARATION

The world community of States, assembled in Nairobi from 10 to 18 May 1982 to commemorate the tenth anniversary of the United Nations Conference on the Human Environment, held in Stockholm, having reviewed the measures taken to implement the Declaration and Action Plan adopted at that Conference, solemnly requests Governments and peoples to build on the progress so far achieved, but expresses its serious concern about the present state of the environment worldwide, and recognizes the urgent necessity of intensifying the efforts at the global, regional and national levels to protect and improve it.

1. The Stockholm Conference was a powerful force in increasing public awareness and understanding of the fragility of the human environment. The years since then have witnessed significant progress in environmental sciences; education, information dissemination and training have expanded considerably; in nearly all countries, environmental legislation has been adopted, and a significant number of countries have incorporated within their constitutions provisions for the protection of the environment. Apart from the United Nations Environment Programme, additional governmental and non-governmental organizations have been established at all levels, and a number of important international agreements in respect of environmental co-operation have been concluded. The principles of the Stockholm Declaration are as valid today as they were in 1972. They provide a basic code of environmental conduct for the years to come.

2. However, the Action Plan has only been partially implemented, and the results cannot be considered as satisfactory, due mainly to inadequate foresight and understanding of the long-term benefits of environmental protection, to inadequate co-ordination of approaches and efforts, and to unavailability and inequitable distribution of resources. For these reasons, the Action Plan has not had sufficient impact on the international community as a whole. Some uncontrolled or unplanned activities of man have increasingly caused environmental deterioration. Deforestation, soil and water degradation and desertification are reaching alarming proportions, and seriously endanger the living conditions in large parts of the world. Diseases associated with adverse environmental conditions continue to cause human misery. Changes in the

The Development of the Right to the Human Environment : A Preliminary Survey

atmosphere – such as those in the ozone layer, the increasing concentration of carbon dioxide, and acid rain – pollution of the seas and inland waters, careless use and disposal of hazardous substances and the extinction of animal and plant species constitute further grave threats to the human environment.

3. During the last decade, new perceptions have emerged: the need for environmental management and assessment, the intimate and complex interrelationship between environment, development, population and resources and the strain on the environment generated, particularly in urban areas, by increasing population have become widely recognized. A comprehensive and regionally integrated approach that emphasizes this interrelationship can lead to environmentally sound and sustainable socio-economic development.

4. Threats to the environment are aggravated by poverty as well as by wasteful consumption patterns: both can lead people to over-exploit their environment. The International Development Strategy for the Third United Nations Development Decade and the establishment of a new international economic order are thus among the major instruments in the global effort to reverse environmental degradation. Combination of market and planning mechanisms can also favour sound development and rational environmental and resource management.

5. The human environment would greatly benefit from an international atmosphere of peace and security, free from the threats of any war, especially nuclear war, and the waste of intellectual and natural resources on armaments, as well as from *apartheid*, racial segregation and all forms of discrimination, colonial and other forms of oppression and foreign domination.

6. Many environmental problems transcend national boundaries and should, when appropriate, be resolved for the benefit of all through consultations amongst States and concerted international action. Thus, States should promote the progressive development of environmental law, including conventions and agreements, and expand cooperation in scientific research and environmental management.

7. Environmental deficiencies generated by conditions of underdevelopment including external factors beyond the control of the countries concerned, pose grave problems which can be combated by a more equitable distribution of technical and economic resources within and among States. Developed countries, and other countries in a position to do so, should assist developing countries, affected by environmental disruption in their domestic efforts to deal with their most serious environ-

mental problems. Utilization of appropriate technologies, particularly from other developing countries, could make economic and social progress compatible with conservation of natural resources.

8. Further efforts are needed to develop environmentally sound management and methods for the exploitation and utilization of natural resources and to modernize traditional pastoral systems. Particular attention should be paid to the role of technical innovation in promoting resource substitution, recycling and conservation. The rapid depletion of traditional and conventional energy sources poses new and demanding challenges for the effective management and conservation of energy and the environment. Rational energy planning among nations or groups of nations could be beneficial. Measures such as the development of new and renewable sources energy will have a highly beneficial impact on the environment.

9. Prevention of damage to the environment is preferable to the burdensome and expensive repair of damage already done. Preventive action should include proper planning of all activities that have an impact on the environment. It is also important to increase public and political awareness of the importance of the environment through information, education and training. Responsible individual behaviour and involvement are essential in furthering the cause of the environment. Non-governmental organizations have a particularly important and often inspirational role to play in this sphere. All enterprises, including multinational corporations, should take account of their environmental responsibilities when adopting industrial production methods or technologies, or when exporting them to other countries. Timely and adequate legislative action is important in this regard.

10. The world community of States solemnly reaffirms its commitment to the Stockholm Declaration and Action Plan, as well as to the further strengthening and expansion of national efforts and international co-operation in the field of environmental protection. It also reaffirms its support for strengthening the United Nations Environment Programme as the major catalytic instrument for global environmental co-operation, and calls for increased resources to be made available, in particular through the Environment Fund, to address the problems of the environment. It urges all Governments and peoples of the world to discharge their historical responsibility, collectively and individually, to ensure that our small planet is passed over to future generations in a condition which guarantees a life in human dignity for all.