

Dr. GAVRIL IOSIF CHIUZBAIAN
President, Romanian Lawyers' Union
Former Minister of Justice

ENVIRONMENT PROTECTION: A GLOBAL PROBLEM FOR HUMANITY

Distinguish colleagues:

Regarding environmental issues, I would now like to discuss "**Environmental protection – a global problem for humanity**".

In a world of inter-dependencies, the protection of our environment is increasingly becoming (particularly thanks to national and international juridical instruments) a key priority for humanity as a whole.

The environment, with all its constituents, is the heritage of all mankind. Therefore it should hold our attention as a problem of global importance with a wide array of ramifications for short, but mostly for long, term. The solution to this problem calls for worldwide action, through the cooperation and direct participation, on an equal footing, of all the countries and peoples of the world.

Mirroring this legitimate concern, the **Millennium Declaration**, given on 8 September 2000 by the General Assembly of the United Nations, speaks of the **protection of the environment** as one of the major objectives for the international relations at the beginning of this century and millennium.

In very suggestive words, the documents urges us "to make our best efforts with a view to spare the humanity, particularly our children and grandchildren, from the danger of living on a planet irreversibly ruined by human activities, and unable to cater for their needs".

Reality is a vivid proof that everywhere in the world, under our very eyes, the environment depreciates, which is a warning that, should this process be further ignored by the authorities of the developed – and not only – countries, we may very well be witnesses to the destruction of the Earth's ecosystem, with a direct threat to the survival of the human kind.

So as the basic elements of the environment (water, air, wildlife, soil, etc.) cannot be bounded by political frontiers, nor can pollution be walled in.

Globalisation is a trend that is rendered inevitable by the extended and merciless consequences of phenomena affecting all mankind, such as: **the depletion of the ozone layer, the greenhouse effect, climatic changes, desertification, the threat to the natural heritage of the human species.**

Environmental issues have acquired a global nature due to the frequent cases of trans-border pollution, by pollution in various areas of the marine environment, including areas outside national jurisdictions, in regions deemed to be the common heritage of mankind.

A few examples along this line are the Chernobyl Case (1986), which affected several European countries, and the nefarious effects of which are present to this day; the Sandoz Case (Switzerland, 1986), with the pollution of the Rhine, or the Baia Mare Case (Romania, January 2000), which polluted waters on the territories of Romania and Hungary.

It has also become symptomatic for the modern world to have frequent oil spills in sea and ocean waters, caused by shipwreck.

And yet, this is not the only source of hydrocarbon pollution of the marine environment. We have also oil platforms, above-ground sources, rivers flowing into the sea, and even aircrafts doing the same.

Warfare is also causing massive pollution with long-term effects. Setting refineries ablaze generates thick smoke rich in sulphurs and hydrocarbons. Bombing industrial sites releases into the environment arsenic, dioxin, mercury and many other toxic gases, adding to which is the use of uranium-low explosives that have devastating effects on humans and the environment.

In this sense, the Vietnam War, with its disastrous consequences recognized by the International Tribunal of Conscience held in Paris in May 2009, the two Gulf wars, the sad experiment called Kosovo and the Afghanistan war have been more than telling.

The disruptions caused by Man to environment are a fact, and they call for immediate action both by legislative initiatives in each country, and by cooperation among states, with the participation of international organisations (including non-government organisations), for the purpose of launching a prompt world-wide comprehensive and efficient standard-setting process.

Given the present status, environmental protection becomes ever more obviously not just a “technical” aspect of the Man – Nature relationship, but rather a complex, interdisciplinary task involving the international relations in all spheres of interest: political, economic, commercial, and good neighbourly ties.

Unfortunately, the economic gap between states, the concentration of fabulous natural resources in the developing countries, which are not interested in the preservation of such resources, due to their immediate market value, make it more and more difficult to find a solution. This explains why, with every year that passes, the area of forested land diminishes, and the number of species meant to maintain the balance of nature decreases.

It is also common knowledge that the rich countries are now trying to persuade the developing countries to save on their natural resources. After centuries of having lavishly consumed their own, with no concern about saving – which was the very engine of their economic development – the developed countries are now claiming, for the benefit of mankind, that the other countries do exactly what they themselves never did. They go as far as claiming that certain areas in some countries be declared “territories of all humanity”. We are moving, I’m afraid, in a vicious circle with no easy escape.

This is the reason why I think that what we need, at national and international levels, is a speedy reconciliation between economic development and environmental protection, to give substance to the concept of sustainable development.

It is of great importance for us all to be aware of the multidisciplinary nature of environmental law, and that, in matters regarding the protection and conservation of the environment, it is much easier and cheaper to prevent than to control or restore. This, however, requires the allocation of sufficient funds.

This is one more reason why, in this trend of globalising environmental protection concerns, the economic sector is called to play an important part through environmental protection measures which, although reflected in the production costs, will yet have a long-term return on investment. Of similar importance in this interplay will be the commercial, technological, scientific, political and social factors.

The outbreak of the environmental crisis, with a large variety of polluting effects going beyond frontiers, has sparked an increasing interest in setting international rules.

Despite this, for a long period of time, the norm-setting process consisted of empirical attempts of a somewhat questionable efficiency.

The growing awareness of the danger of a fast degradation and destruction of the environment in all its components has triggered a new approach of this phenomenon at state, inter-state, and international organisations levels.

One of the effects of this new approach was the introduction by the UN International Law Committee in the draft articles on the liability of the states of a provision according to which the violation of very important environmental obligations will be treated as an international crime. For example, Article 19 stipulates that “any serious breach of an international obligation of utmost importance for the safeguarding and preservation of the human environment, such as the commitment not to cause the massive pollution of the air or the sea, shall be deemed an international crime”.

Of special importance in this development was the Stockholm Declaration of 16 June 1972, a document which, although a mere statement, had the merit of laying down 26 principles that opened the door widely to international law making on environmental issues.

Of all the principles of this Declaration, I would like to point out to Principle 21, which laid the foundations of reconciliation between sovereign states, in the interest of environmental protection and conservation.

Also noteworthy in the Stockholm Declaration is Principle 1, which proclaims man's fundamental right to freedom, equality, and satisfactory living conditions, in an environment enabling him to live in dignity and prosperity. All these developments had an impact on theoretical thinking, and helped the shaping of new legislation based on new precautionary and preventive techniques rather than, or alongside with, remedial techniques.

The new technology determined national and international legislators to provide for complex licensing procedures for all human activities with an impact on the environment.

Also thanks to the Stockholm Conference, the United Nations Environmental Programme (UNEP) was set up in 1972.

The multidisciplinary nature and flexible variety of environmental law have given it an ample, comprehensive and diversified regulatory scope.

In an attempt to group such legislation, we can distinguish two major types of regulations:

1) standards having as main purpose other sectors of activity, but include aspects related to environmental protection; and

2) international legislation, having for an object the protection and conservation of the environment, be it with a wide-range or specific sector coverage.

It would be, however, only fair to note that, for the time being, environmental law does not include a framework agreement on the key-principles and guidelines on the protection of the environment in its complexity as a global dimension, and with a reference to the multitude and diversity of components. We do have, nevertheless, a great number of conventions which, taken together, treat the environment in the entirety of its components.

It is worth remembering that a special chamber was set up at the Hague International Court of Justice, for the judgement of environmental conflicts between states.

Notwithstanding the numerous difficulties and adversities encountered by international legislators in this area of law, we have to admit that the developments up to date reflect the preoccupation of most of the states and international organisations, with the UN at the top, to create an adequate legal framework for the efficient settlement of issues related to the protection and conservation of the environment.

Allow me now to briefly make a few considerations on some legal aspects regarding the protection and conservation of the marine environment.

A first remark has to do with the fact that the 1992 Rio de Janeiro Framework Convention regarding climatic changes, and Agenda 21, which were the first international law documents undertaking the integrated management of coastal areas, institute the principle of integrated management as a new and multi-form obligation.

Various other international organisations, among which the Council of Europe and the European Union – recognise this principle.

Despite its international recognition, this principle is not applied fully satisfactorily. Some countries (Egypt, France, Greece, and Lebanon) have already adopted legislation specific for the integrated management of coastal areas, and yet, in some cases, such legislation did not provide an adequate institutional and decisional integration.

Even fewer Mediterranean riparian countries (France, Egypt and Tunisia) have defined and clearly outlined their coastal waters.

Similarly, little progress has been made towards institutional coordination and local cooperation, towards the accurate regulation of land ownership, land use, access to littoral areas, land zoning, control of coastal activities, and protection of natural spaces, etc.

According to French doctrine (I am referring here to Professor **Michel Prieur**), the implementation of this principle can be viewed from two perspectives: an **integration from the sea**, seen as an overall integrated management of the coast, with the inclusion of the land, sea, and river spaces, and an **integration from the land**, which, although it provided no original

legal instrument, made an attempt to mobilise the initiatives of the local communities for the sustainable development of a particular coastal zone.

With regard to the Black Sea, we should like to note that the transitional character and the underdevelopment of the economies of the riparian countries make it difficult for the environmental concerns and the regional cooperation on such issues to take shape, in spite of many and ambitious initiatives to date.

This explains why each riparian state has its own environmental policy in its area of jurisdiction. A coordination of national legislations with the counterpart international legislation being no easy task, the Black Sea area is struggling with great difficulties in conserving its biological resources and marine biodiversity.

A review of the legislative process in this sector demonstrates, beyond doubt, the need to reconcile economic development with environmental protection, to give substance to the concept of sustainable development to which I have referred and which includes the right to health.

To achieve this, however, inter-state cooperation is needed, as well as the cooperation of international organisations (including non-governmental organisations), both for the purpose of adopting universally accepted regulations, and, especially, for the purpose of implementing them.

I also believe that this aspiration cannot be achieved before the harmonisation of the national legislations with the international legislation.