

INTERNATIONAL ENVIRONMENTAL LAW

THE CONSTITUTIONAL PROTECTION OF THE RIGHTS OF NATURE - A GOAL OF THE 3RD MILLENNIUM

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Abstract

The first country that adopted the constitutional rights of nature was the Republic of Ecuador in 2008. This Constitution contains in Title II, Chapter VII, named Rights of nature, 4 (four) articles (71-74), which contain all the hope and obvious progress achieved in this respect.

The constitution of this country states, inter alia, that "nature has the right to exist, to persist, to maintain and to renew its life cycles, structures, functions, and evolutionary processes". At the same time, it mentions that the right to restoration is independent of the "obligation of the State and natural persons or legal entities to compensate individuals and communities that depend on affected natural systems."

The paper addresses the issue of the rights of nature and expresses the view that more and more countries should adopt internal legislation to protect them through the National Criminal Codes, and criminalize offenses like ecocide.

Once the criminal protection of the rights of nature is assured, we can assume that the premises of the constitutional enshrinement of the rights of nature are met. Only upon criminal protection and/or legislation subsequent to the fundamental law we can talk about having a protectionist framework to a certain extent, but for a very effective protection it is a must for the rights of nature to be enshrined at constitutional level.

Keywords: *Mother Earth, Rights of Nature, Ecocide, Biocrime, Universal Declaration of Rights of Mother Earth.*

One of the greatest and most important concerns of today's humanity is to preserve nature so that future generations can benefit from a healthy environment as little touched by man's destructive actions. The extent to which man has succeeded or has failed to protect nature is questionable, but one thing is certain:

following man's interaction with nature, the latter had suffered, is and will suffer in relation to the invasive development trend of mankind.

Man as an intelligent being has shown that his superiority to other beings stems from the existence of his endowment with consciousness, an element that makes the difference and which puts man first in the top of the importance of the creatures on Earth. It is the man who knew how to identify and preserve his rights in relation to some of his peers who at some point abandoned the idea of equality and respect and tried to arrogate different advantages within his society. Thus, at this time we can talk about an exhaustive international protection of human rights, both through legal instruments of international vocation, through national fundamental laws and their subsequent legislation, as well as through organizations and bodies set up for the purpose of their application.

About the protection of human rights has been discussed throughout history many times, but the point of reference in this field is marked by the adoption of the Universal Declaration of Human Rights (1948), a declarative international instrument of rights, without binding legal force, whose provisions are in one way or another in all the fundamental laws subsequently adopted at national level. In the human-nature report, however, it seems that man forgotten Mother Earth and its imperiously needed protection, whose rights are discussed about fairly late, being configured in a Universal Declaration in the year of 2010. If, with regard to human rights, man succeeded in introducing them into national constitutions, preserving them and raising them to the "religion of the end of the century,"¹ then this is not the case in terms of the rights of nature. In the vast majority of the modern constitutions of the countries around the world, the rights of nature are not included nor are attempts to harmonize in this sense. The priority is the economic development through the exploitation of nature by man and his interests prevail to the detriment of nature.

The first country that adopted the constitutional rights of nature was the Republic of Ecuador in 2008. This Constitution contains in Title II, Chapter VII, named Rights of nature, 4 (four) articles (71-74), which contain all the hope and obvious progress achieved in this respect. We will not dwell much on the content of these four articles because we will discuss the articles in the Universal Declaration adopted on April 22, 2010 at the Conference of Nations on climate change and Mother Earth's rights, held in Cochabamba, Bolivia, which has a similar content. Some succinct explanations, however, are required. It is welcomed the initiative of the Republic of Ecuador, which became the first country in the world to declare constitutional rights to nature, thus establishing a new system of environmental protection and reflecting the beliefs and traditions of the Ecuadorian indigenous peoples.

¹ Adrian Năstase - Human Rights Religion of the End of the Century, Publishing House The Romanian Institute for Human Rights, 1992

The constitution of this country states that nature “has the right to integral respect for its existence and for the maintenance and regeneration of its life cycles, structure, functions and evolutionary processes.”² At the same time, it mentions that the right to restoration is independent of the “obligation of the State and natural persons or legal entities to compensate individuals and communities that depend on affected natural systems.”³ So the Constitution of the Republic of Ecuador redefines man's relationship with nature, claiming that nature is not only an object that can be owned and exploited by humans, but is rather an entity that has rights that should be considered fairly and anchored under legislative protection. Of course, it is worth considering that there have been difficulties in applying the Ecuadorian constitutional provisions and there are contradictions with existing laws and the objective reality. Also the interest of some entities, transnational corporations attempting to cancel the rights of nature, is felt.

Very interesting is the idea of changing the paradigm consisting in the fact that nature moves from the object model that can be taken and exploited by people to the model of an entity having rights. The desideratum of a new developmental model in which human beings must be regarded as interdependent in nature and not as dominant exploiters is being created. It can be said, without fear of mistaking, that recognition of the "Rights of Nature" is a global-scale progress that has to be disseminated and discussed internationally, showing that the Republic of Ecuador has the merit of seeking new ways of solving different environmental crises. Equally welcome is the idea of creating the first International Rights of Nature Tribunal in Quito, Ecuador⁴.

The Tribunal has jurisdiction to settle cases on the basis of the Universal Declaration of The Rights Of Mother Earth, adopted in Cochabamba on 20 April 2010, by a number of 35,000 people present at a global summit on the subject. The Tribunal has already dealt with nine cases submitted by the Prosecutor of the Earth, Ramiro Avila (Ecuador), including: Chevron - Texaco (Ecuador) pollution; oil spill of BP Deep Horizon (USA); the destruction of the Great Barrier Reef by coal mines (Australia); hydraulic fracturing (USA). At the same time, two more cases with a global impact have been submitted to the Tribunal, which represent a systematic violation of Mother Nature's rights, namely the threat of Genetically Modified Organisms (GMOs) and Climate Change. The Tribunal sessions were attended by participants from: Australia, Switzerland, South Africa, USA, Spain, Canada, India, Romania, Bolivia, Argentina, Great Britain etc. who have understood that the earth's vital system and communities at international level are facing environmental crises such as climate change, desertification, massive

² The Constitution of Ecuador, Article 71, par. 1

³ Idem

⁴ See The International Rights of Nature Tribunal website at <https://therightsofnature.org/rights-of-nature-tribunal/>

deforestation, toxic contamination, extinction of species, etc. all generating tragic repercussions on all forms of life.

It seems that 2010 was rich in *lex ferenda* proposals and the adoption of effective legal instruments on the protection of the rights of nature at international level. This year, lawyer Polly Higgins proposed to the Rome Statute to include in Article 5 also the ecocide on the list of international crimes already existing. Mrs Higgins's proposal was well received by the UN Commission on the International Law, mandated to promote the progressive development of International Law and its codification. Acceptance by the committee was published in Chapters 5 and 6 of the first written book in the field by the distinguished lady lawyer, under the title *Eradicating Ecocide*⁵.

The actual proposal at that time was to create and define, in Article 5 of the Rome Statute, the ecocide offense and to place it at the highest level in International Law, in the framework of the crimes against peace (Crime Against Peace). Of course, since this is a crime, the place of discussion could be the field of International Criminal Law as a division of Public International Law. Thus, we recall an earlier idea that we proposed, which insisted on the need to codify several international crimes, and the initiative to create an International Criminal Code. On that occasion, we have defined the text of the international crime of Biocrime, which protects the essence of the human being, namely the Genome of the Descendancy⁶.

It is very important that the international ecocide offense is codified at this time in the Rome Statute, since at the beginning of 2016 this included 122 nations as signatory parties. As a consequence, for the commission of a crime against peace, the jurisdiction to resolve the case lies with the International Criminal Court.

Currently, the Rome Statute includes in Article 5 (1) the following international offenses: 1. The Crime of Genocide, 2. Crime Against Humanity, 3. War Crimes, 4. The Crime of Aggression, and the last to be added, number 5, The Crime of Ecocide⁷.

It is important to note that both the provisions of criminal law and civil law apply to ecocides. Last but not least, it should be recalled that there have been proposals for the establishment of an International Environment Court with the main task of resolving legal conflicts in the so-called Ecocide Law, which contains provisions on preventing, forbidding and taking political, financial and business decisions to remove the human causes generating ecocide and natural disasters.

⁵ Polly Higgins, *Eradicating Ecocide: Laws and Governance to prevent the destruction of our planet*, 2010, 2nd Ed. 2015, *End Earth is our Business* 2011

⁶ See Nasty.M.Vladoiu, *Biocrime – A new concept*, publicat în "Criminal Law Review", Volumul I, Ediția 1, Ian-Iun.2013, <http://www.criminallawreview.eu>

⁷ See Article 5.1. of The Rome Statute of the International Criminal Court

To what extent the new proposed International Environment Court will compete with the Rights of Nature Tribunal set up in Quito (Ecuador), is an interesting matter to be noticed for the future.

The concern regarding the elaboration of the so-called Ecocide Act began in 2011 when a group of lawyers led by Polly Higgins were preparing for an important case in this field before the UK Supreme Court. In fact, the Ecocide Act has been transposed into the European Parliament Directive on Ecocide, proposed by the Social Movement, "End Ecocide On Earth."⁸ Section 6 (six) of the Ecocide Act provides the explicit version of the ecocide offense having the following definition, "The right to life is a universal right and where a person, company, organisation, partnership, or any other legal entity causes extensive damage to, destruction of or loss of human and or non-human life of the inhabitants of a territory ... is guilty of the crime of Ecocide."⁹

We can not conclude the brief discussion on ecocide presented herein without showing that the ecocide law was an initiative of Mr. Olof Palme, Prime Minister of Sweden, since 1972. He held a particularly interesting and explicit speech at the Stockholm Conference, which focused on the environment for the Man emphasizing the Vietnam war, which was considered by him an ecocide of the moment. In fact, at the time, Indira Gandhi of India, as well as Tang Ke, the leader of the Chinese delegation, called for the ecocide to be considered an international offense. During the conference, a working group was set up to draw up a draft of the Ecocide Convention adopted in 1973 by the United Nations. The ecocide offense was included in the draft of the Rome Statute (1985-1986), after which it was removed, following that in our times to be reconsidered, as explained in this paper¹⁰. The ecocide offense is now criminalized in 10 countries that considered it imperative to provide criminal protection against this crime¹¹.

Regarding the Universal Declaration of Rights of Mother Earth adopted on April 20, 2010 at the the The World People's Conference on Climate Change and the Rights of Mother Earth, in Cochabamba, Bolivia, we note the following: First, we were saying that there is a major paradigm shift from nature as a good, object susceptible of being the property of someone, to "Mother Earth is a Being" as stipulated in Art. 1 par. 1 of the above-mentioned Universal Declaration. The same states that "Mother Earth is a unique, indivisible and self-regulating community of interconnected beings who sustain, contain and reproduce all beings." Moreover, it is shown that "every being belongs to the Mother Earth" and that "the inherent

⁸ See more at <http://endecocide.org/>

⁹ See Ecocide Act at http://eradicatingecocide.com/wp-content/uploads/2015/11/EL-factsheet_English11.15.pdf

¹⁰ Prof. D. Short et al, Ecocide is the Missing 5th Crime Against Peace, 2012, 2013 <https://www.sas.ac.uk/node/1033>

¹¹ See the Penal Codes of Georgia, Armenia, Ukraine, Belarus, Kazakhstan, Kyrgyzstan, Moldova, Russia, Tajikistan, Vietnam.

rights of Mother Earth are inalienable, having as their source their own existence.¹² Very important to note that Article 1 mentions the rights of other beings in relation to human rights. Thus, in order to maintain the framework of an objective reality, the proportion is preserved, considering that "as men have their rights, and other beings have their own specific rights species or their kind and appropriate to their role and function in the communities in which they exist "¹³. This idea is strengthened by para. 7 of art. 1 of the Universal Declaration, the authors showing that "the rights of every being are limited by the rights of another being, and any conflict between these rights must be concluded without affecting the integrity, balance and health of Mother Earth.¹⁴" Taking into consideration those hereby mentioned, we find out that it is distinguished and acknowledged that there is a supremacy of beings and species. Although they take their right to limit the rights of other beings from this supremacy the conflict generated by the protection of these rights must be resolved in the light of the integrity, balance and health of Mother Earth. This consideration creates the prerequisites for setting up the provisions of Article 2, the inherent rights of Mother Earth.

Those referred to in Article 2 of the Declaration, come to distinguish the paradigm difference between nature as an object susceptible to property and the acceptance of Mother Earth as a being who has rights together with all the beings that make up her. Thus are stated rights as: the right to live and to exist, the right to respect, the right to resources as a source of life in general, the right to full health without human intervention over the life cycle, and last but not least, the right to healing if the violation of recognized rights has as cause the human activities through contamination, pollution etc.

Article 3 of the Universal Declaration on the Rights of Mother Earth gives implicitly, following a complete point-to-point interpretation, the supreme position of the binomial Man-Mother Earth, but at the same time, stigmatizes man as the generator and principal guilty of the destruction and damage to it.

We will not dwell on each of the obligations punctually, we will mention only the basic ideas of this article, consisting of clear requirements, such as: the promotion of economic systems in harmony with nature, the maintenance of peace through the elimination of nuclear, chemical and biological weapons, the assurance of human well-being in consensus with the contribution to the welfare of Mother Earth, the observance, protection and preservation of the restoration of the integrity of vital cycles, processes and balance of nature, and last but not least, ensuring that the destruction caused by the violation of these rights by people is restored and that the evildoers will be held accountable.

¹² Article 1 of the Universal Declaration of Rights of Mother Earth <http://therightsofnature.org/universal-declaration/>

¹³ Idem

¹⁴ Idem

One can easily discern the idea, after reading this article in detail, that man is considered both the principal guilty of the destruction and damage to Mother Earth and the main culprit for the destruction and damage to Mother Earth, and the main savior and physician in the permanent service for the protection of its health and all beings living in interdependence with man. To the extent that the existence of alien beings, as has already been undoubtedly expressed by NASA official representatives and not only, man has to become the first diplomat empowered with concrete tasks to defend the health and safety of the planet, and to promote the rights of Mother Earth together with all existing beings in interdependence.

Article 4 (1) of the Universal Declaration reveals a succinct definition of the term "being," considering that it includes ecosystems, natural communities, species, and any other natural entities that are part of Mother Earth. Paragraph 2 states that "this Universal Declaration does not hinder the recognition of other inherent rights of all beings or specific beings.¹⁵" Hence the fact that the authors have been desirous and given an open and complementary character by adopting a cooperative attitude through this document in relation to other existing or future documents of the same kind.

It is well known that effective protection of certain rights, without claiming to be exhaustive, is achieved through the adoption of well-structured legal instruments and, at the same time, through the creation of bodies and organizations, having as main activity the implementation of these legal instruments. With regard to the basic legal instrument on this matter, we believe that the Universal Declaration of Rights of Mother Earth can be considered a cornerstone of the international system for the protection of the rights in question. In terms of bodies and organizations which have as their object the implementation of instruments adopted in the field, they should be sustained and supported internationally. We must mention here the Global Alliance for the Rights of Nature, which is known to be a global movement created to organize and strengthen communities that respect and defend the rights of nature¹⁶. The "Alliance", which played an extremely important role in the adoption and implementation of the Universal Declaration of Rights of Mother Earth, seeks to ensure that the rights of the Earth and all living beings are recognized and at the same time to ensure the integrity and health of the Earth and its communities. We will not analyze the existence and effectiveness of other bodies or organizations with international or national vocation in the field, but we make it clear that there is interest in setting up effective legal entities such as the Bolivian Environment Ombudsman.

Of course, we cannot forget the European countries that have presented interest in this issue. Thus, Switzerland recognizes the dignity of all beings in its

¹⁵ Article 4, para. 2 of the Universal Declaration of Rights of Mother Earth <http://therightsofnature.org/universal-declaration/>

¹⁶ See www.therightsofnature.org

constitution, Spain recognizes the rights of monkeys, the United Kingdom Government has publicly stated that animals are sensitive beings and not just goods, even Romania has proposed a law that recognizes the dolphin as a rights holder.

Analyzing all the above, without claiming that the present study has exhaustively addressed the issue in question, and recalling that Ecuador is the first country to adopt in 2008 a Constitution that also embraced the rights of nature, the legitimate question is whether other countries should adopt the same position to create a harmonious legal protection at global level. We believe that the first step could be the adoption by several states of national legislation that protects the rights of nature through national criminal codes, incriminating crimes such as the ecocide. Once the criminal protection of the rights of nature is assured, we can assume that the premises of the constitutional enshrinement of the rights of nature are met. Only upon criminal protection and/or legislation subsequent to the fundamental law we can talk about having a protectionist framework to a certain extent, but for a very effective protection it is a must for the rights of nature to be enshrined at constitutional level. Only the constitutional protection of this type of rights will surely ensure their true observance and will create that continuous and permanent framework of control over the constitutionality of the legislation following the fundamental law, which in most cases regulates rather abusively in this area. The situation of Romania in terms of the possibility of introducing such rights into the Constitution of the country is both in terms of the profile of the Romanian citizen and of the entire Romanian society, prolific for the adoption of such regulations.

The more distant and recent history shows an extraordinary appetite for the protection of the man-nature relationship by the Romanians. We avail of this opportunity to launch an invitation to a profound analysis of the actual possibilities to achieve this desideratum, which would surely bring Romania among the most advanced countries also from this perspective. At the same time, we challenge the decision-makers to analyze the opportunity and necessity of adopting such constitutional provisions, which at this moment we estimate to be a *lex ferenda* proposal.

Finally, we express firmly the belief that the Romanian citizen has at this moment, both individually and at the level of the entire society, the vibrational, intellectual and, last but not least, the emotional qualities to start and implement this project of real importance, both for our country and globally.

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