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Intra- and inter-generational environmental responsibilities and rights and the multilateral environmental cooperation

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1. Globalization of the environmental interdependence

There is an increasing environmental *interdependence* of human beings due to several factors. The sharply increased *population* for the twentieth century and the process of accelerated *urbanization* are possibly the two most well-known root factors which resulted in much larger environmental pressures at regional and global scales, as well. In spite of some intensification of the international development cooperation, significant environment-oriented policy developments and technology innovations, the differentiation in standards of living, *gaps in well-being and poverty* has further increased for the recent decades, whilst the *overall consumption volumes* in absolute terms have dramatically changed globally.

As one consequence, there is an accelerating demand for and use of various *natural resources*, which are limited in terms of their quantitative characteristics. Such assets may include mineral resources, arable land areas and pastures, freshwater resources, fish stocks etc. Due to the increasing world population, the average per capita access to the natural resources has drastically decreased and even if there is recently a slowing rate of the population increase, these perspectives are worsening (Engelman, 2000).

People are also highly dependent on the state and *quality of their ambient environment*, i.e. the air quality, varying climatic conditions, qualitative features of the available drinking water etc. Of course, the satisfactory quantitative and qualitative characteristics of these components of the environment are together essential as life conditions.

In course of meeting their different needs, human activities affect the environment through the consumption of natural resources and also through the pollution of the environmental media.

In case of *internationally shared resources*, regional or global "commons", imbalanced or unilaterally inequitable consumption is the source of conflicts between the interested parties. There are well known historical examples of such conflicts related to transboundary watercourses, places of occurrence of precious mineral resources or energy carriers. Moreover, increasing consumption of non-renewable resources and use of certain renewable resources beyond the limits of their recovery leads to gradual shrinking and ultimate disappearance of these resources. The terms of overgrazing, overfishing, the overhunting for food or what is even worse for "ivory" or

precious leathers were already introduced many decades ago. Such kind of over-consumption has already reached the largest scales. The diversity of the Earth's biological resources is decreasing at an unprecedented pace due to various anthropogenic impacts.

There is a similar situation with the *pollution of the environment*. Harmful substances emitted to the atmosphere traveling long distances caused pollution and environmental damages in countries, which were far away from the origin of these pollutants. We can mention the "acid rains" or the case of pesticides such as the DDT that were even found in remote polar areas. Transboundary rivers loaded with untreated or improperly treated waste waters in upstream countries cause serious problems to other riparian countries. In worst cases, unintentional emissions of some harmful substances cause such significant changes to the Earth's atmosphere, which globally endanger the relatively stable environmental conditions for all the societies. The depletion of the stratospheric level ozone layer could end up with a catastrophe to all living organisms on land areas. The rapid enrichment of the atmosphere with the greenhouse gases increases the hazard of the global climate change.

Societies have contributed and contribute nowadays to these large-scale processes of environmental degradation to different extent. In this sense, there is a *common but differentiated responsibility* for these hazardous processes. The past, present and possible future socio-economic implications of the subsequent environmental changes also differ substantially region-by-region, sector-by-sector, and even for various societal groups dependent on their *vulnerability* to such changes and means for lessening the adverse impacts. It means that past and present actions of some societies (intentionally or unintentionally) have significant – in many cases adverse – impacts on other societies. Such *intra-generational equity* problems arise more and more frequently at international level in relation to global environmental issues. Moreover, the longer term burden of today's common environment related actions will be also born by future generations. That is why the concept of sustainable development includes also *intergenerational equity* considerations.

Today such disparities and equity requirements are most frequently mentioned in context of the *climate change* hazard both in terms of the different contributions to this hazard (as regards the emissions of the greenhouse gases, GHG) and the vulnerability to its adverse impacts. Concerning the former aspect, the most recent assessment made it again clear that the developed countries ("Annex I" countries of the UN Framework Convention on Climate Change, UNFCCC) has much larger share in per capita terms: "Differences in terms of per capita income, *per capita emissions*, and energy intensity among countries remain significant.. In 2004 UNFCCC Annex I countries held a 20% share in world population, produced 57% of world Gross Domestic Product based on Purchasing Power Parity (GDP_{ppp}), and accounted for 46% of global GHG emissions" (IPCC, 2007a). There is also an apparent distinction between and within the societies as regards the vulnerability to the anticipated consequences of the climate change: "There are sharp differences across regions and those in the weakest economic position are often the most vulnerable to climate change. There is increasing evidence of greater vulnerability of

specific groups such as the poor and elderly in not only developing but also developed countries." (IPCC, 2007b)

Use of natural resources and the issues of biological diversity also closely related to the equity criteria. ".. approximately 60% .. .. of the ecosystem services examined during the Millennium Ecosystem Assessment are being degraded or used unsustainably .. . The full costs of the loss and degradation of these ecosystem services are difficult to measure, but the available evidence demonstrates that they are substantial and growing. Many ecosystem services have been degraded as a consequence of actions taken to increase the supply of other services, such as food. These trade-offs often *shift the costs of degradation from one group of people to another or defer costs to future generations*." (MEA, 2005).

2. Responsibility for and right to access to common natural resources and the healthy environment in transboundary and global context

Disparities among the various societies in access to common natural resources and responsibilities for regional/global environmental degradation together with the possible international responses to these problems have been considered and discussed for quite a long time at various multilateral forums. The alarming messages of the "*Silent Spring*" by R. Carson in 1962 (Carson, 1962) on the possible consequences of long-range environmental pollution and that of the report by *the Club of Rome* in 1972 (Meadows et al., 1972) on the finite environmental resources were important catalysts to the change of global thinking on environment.

1972 is also the year of the *first high-level global international forum* focusing on such environmental issues. It was organized under the aegis of the United Nations in Stockholm. Environment was considered in context of satisfying the basic human rights (UN, 1972): "Both aspects of man's environment, the natural and the man-made, are essential to his well-being and to the enjoyment of basic human rights the right to life itself. .. (Principle 1:) 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 ..".

Furthermore, both above aspects of deteriorating environment were referred to: "We see around us growing evidence of man-made harm in many regions of the earth: dangerous levels of *pollution* in water, air, earth and living beings; major and undesirable disturbances to the ecological balance of the biosphere; destruction and depletion of irreplaceable *resources*; .. ..".

Concerning the different responsibilities and duties in relation to the globally deepening and expanding environmental degradation, the *distinction between the developed and the developing world* is articulated: "the developing countries must direct their efforts to development, bearing in mind their priorities and the need to safeguard and improve the

environment. For the same purpose, the industrialized countries should make efforts to reduce the gap themselves and the developing countries". Besides this critical reference to the global intra-generational differentiated goals, the common responsibility for the future generations is also proclaimed: "To defend and improve the human environment for present and future generations has become an imperative goal for mankind .. ".

From the point of view of our theme, the most important elements of the *Stockholm Declaration* are those provisions which express the most explicitly the relations between the *"external" responsibilities and "internal" rights* of the States in terms of their environment-related activities. Principle 21 reads "States have .. the sovereign right to exploit their own resources pursuant to their own environmental policies, and the responsibility 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." And we should also refer to the Principle 22 on liability of States for the social and environmental damages caused by activities within the jurisdiction or control of these States to areas beyond their jurisdiction.

Principle 21 on "*transboundary responsibility*" provided the most significant common basis for the most forthcoming environmental agreements. Of course, it provides a very general formulation, whilst actually there is an obvious inequality between the concerned states or groups of states. To make it simple, in many concrete cases there are Parties causing some environmental harm and there are Parties bearing the adverse effects. Such a distinction is similar to the upstream and downstream countries in case of international watercourses or in case of transboundary impact assessments the terms of "Party of origin and "affected Party" are used (Espoo, 1991). However, in case of various regional and global environmental problems, the situation is much more complex, and actually a concerned Party may play both roles, i.e. to some extent being the "originator" and the "victim" at the same time (as e.g. in the case of the upper-air ozone depletion or the man-made climate change hazard).

Furthermore, the *right for development* and poverty eradication of the developing countries were articulated as their highest priorities. It is a prevailing requirement and it is reiterated in all subsequent international documents closely linking this objective to the matter of environmental protection: "In the developing countries most of the environmental problems are caused by under-development". In case of global environmental hazards, supporting developing countries in their efforts against poverty and in reaching their development goals (if these goals are in full harmony with the concept of sustainable development), the developed world assist them also to lessen their part of contribution to those hazards.

It is important to note that in the outcomes of the Stockholm conference apart from the above cited rather indirect statement there is *no direct mention of the historical difference between the various countries*/Parties (groups of countries) in causing the increasing environmental degradation and hazards. Actually, it remained also a rare occasion for the forthcoming negotiations of various declarations, programmes and

agreements to formulate much clearer statements on such an intra-generational inequity; instead, usually the concrete commitments demonstrated the distinction among the various country groups.

It should be recalled that this is the period of "détente" after the toughest years of the Cold War, so that more attention could be paid to other types of international problems, in particular, to the *escalating environmental hazards*. It is especially valid for Europe where *inter alia* the problem of the "acid rains" has been long time investigated regarding their sources, long-range transport processes and severe impacts. Environmental cooperation was a significant part of the final act adopted in 1975 at the Helsinki Conference on Security and Co-operation in Europe (CSCE) as a clear signal of the recognition of the close link between security and environmental hazards, and the environmental interdependence, i.e. the need for coordinated international efforts to cope with those hazards (CSCE, 1975):

- The participating States, *Affirming* that the protection and improvement of the environment, as well as the protection of nature and the rational utilization of its resources in the interests of present and future generations, is one of the tasks of major importance to the well-being of peoples and the economic development of all countries and that many environmental problems, particularly in Europe, can be solved effectively only through close international cooperation, ...

- The participating States will further develop such co-operation by: promoting the progressive development, codification and implementation of international law as one means of preserving and enhancing the human environment, including principles and practices, as accepted by them, relating to pollution and other environmental damage caused by activities within the jurisdiction or control of their States affecting other countries and regions.

At the Helsinki Conference as priority fields of cooperation such *transboundary* environmental problems of common concern were listed as

- *control of air pollution* ("desulphurization of fossil fuels and exhaust gases, pollution control of heavy metals, particles, aerosols, nitrogen oxides, in particular those emitted by transport, power stations, and other industrial plants; systems and methods of observation and control of air pollution and its effects, including long-range transport of air pollutants"),

- *water pollution control* and *fresh water utilization* ("prevention and control of water pollution, in particular of transboundary rivers and international lakes; techniques for the improvement of the quality of water and further development of ways and means for industrial and municipal sewage effluent purification; methods of assessment of fresh water resources and the improvement of their utilization, in particular by developing methods of production which are less polluting and lead to less consumption of fresh water"),

- protection of the marine environment.

As a followup, in 1978 the Norwegian Minister of environmental protection, *Gro Harlem Brundtland* was invited to Moscow. She confirmed that acid rain from sources in other countries caused serious damage to fisheries in the lakes of Norway and Sweden. It was not an issue that could be addressed by Western European countries alone, so that East-European countries had to be included in any further negotiations. More precisely, she called for an international convention on the reduction of sulphur-dioxide (SO_2) emissions. In turn, that agreement was concluded in 1979 and to some extent its adoption could be considered as a milestone in the history of international codification of mutual environmental responsibilities, rights and obligations of the interested states.

In the "background", the *international environmental monitoring and scientific collaboration* have rapidly strengthened and resulted in increasing scientific evidence on emerging large-scale environmental hazards due to various human activities. The policy analysis and the recommendations in the report by the *World Commission on Environment and Development* (WCED, 1987) were based on these scientific results. Just in the period of its preparation (that started in 1983/84) as a clear and concrete demonstration of dangerous but inadvertent consequences of human activities, the "ozone hole" over the Antarctic was discovered in 1985 and just that year a framework type global agreement was adopted on the protection of the ozone layer. Obviously, these developments provided also significant impulse to the work of the WCED.

This period was culminated in the 1992 *UN Conference on Environment and Development* where the political leaders of the states adopted the principles of environment and development (Rio Declaration) and the global programme of sustainable development (Agenda 21). The Rio Declaration already explicitly pinpoints the *differentiated responsibility* of "North" and "South", the equitable rights of the societies of less developed countries for (sustainable) development and the requirement for caring for future generations, as well. Thus, principle 7 was dedicated to the developed world's particular responsibility by stating that "in view of the different contributions to global environmental degradation, States have common but differentiated responsibilities; the developed countries acknowledge the responsibility that they bear in the international pursuit of sustainable development *in view of the pressures their societies place on the global environment* and of the technologies and financial resources they command". Principle 5 addressed the disparities, i.e. the key element of the intergenerational inequity: "all States and all people shall cooperate in the essential task of eradicating poverty as an indispensable requirement for sustainable development, in order to *decrease the disparities in standards of living*"; and principle 6 referred to the special situation and needs of developing countries. Finally, principle 3 is the most general point on the intergenerational considerations that is on the requirement to *equitably meet developmental and environmental needs of present and future generations* in course of fulfillment of the right to development.

In spite of the environmental enthusiasm and political commitments to global sustainable development in late 1980s and early 1990s, there was apparently within a short period of time an *increasing implementation deficit* in various international policy programmes and legal instruments. The Rio+5 meeting in 1997, the highest level UN Millennium Assembly in 2000 (adopting the so-called Millennium Development Goals) and the World Summit on Sustainable Development addressed these problems and urged to take more concrete actions to cope with the social disparities, poverty gap, unsustainable consumption patters, still continuing natural resource depletion etc. Such a controversial situation could also be noticed in terms of multilateral legal instruments. Large number of new agreements were adopted during an about two decadal period by 1992 (many more than ever before), but afterwards this process seemingly slowed down: serious problems were signaled concerning the implementation and improvement of the recently adopted instruments and in some cases even the enforcement (i.e. the entry into force) of such instruments was questioned (as e.g. in case of the 1997 Kyoto Protocol).

3. Multilateral agreements as means of internationally coordinated actions for environmental protection

The growing number of cases with severe transboundary environmental impacts of industrial accidents, the better understanding of environmental interdependence at regional and global scale and the concern for the possible long-term adverse implications of certain human activities have forced states to recognize that they should *change the historical views on national sovereignty and they should accept responsibility for the adverse transboundary and global impacts* of the activities carried out within the area of their jurisdiction. As described above, such political process could effectively evolve only after the late 1970s and accelerated from the second half of the 1980s. The Stockholm Conference in 1972, the Helsinki Conference in 1975 and the adoption of the WCED's report by the UN General Assembly in 1987 were possibly the three most important milestones in reaching consensus on the urgent matter of developing relevant action programmes, formulating a proper legal framework and taking concrete measures in order to cope with the existing and the emerging environmental hazards.

In Europe, the intensified activities of the United Nations Economic Commission for Europe and the Conference on Security and Cooperation in Europe in the second half of 1980s, and in particular, the outcomes of the CSCE Meeting on the Protection of the Environment (Sofia, 1989) resulted in a productive collaboration among the concerned countries.

The legal instruments and comprehensive programmes adopted or initiated at the beginning of the 1990s symbolized the start of this new era both at global level (global environmental conventions or Agenda-21 as outcomes of the UNCED, 1992) and at pan-European level (e.g., three new UNECE-conventions in 1991 and 1992 or the "Lucerne" process on the "Environment for Europe").

Afterwards even more emphasis was put on such issues as *the implementation* (and gaps in implementation) of the existing international instruments and programmes, their *interlinkages* (synergies), efficiency of their *governance*, and systematic identification of the "missing" areas (i.e. those for which legal provisions have not been elaborated). Just contrary to these tendencies, *some skepticism* was also growing and such arguments were echoed that instead of more conventions it would be much more important to effectively fulfill the existing commitments.

As a matter of fact, nowadays *almost all basic - regionally or globally shared - environmental components, relevant transboundary/global processes and the related significant human activities* are "covered" by one or another international legal agreement, including: the atmosphere (and its pollution with harmful substances like the sulfur-dioxide or carbon-dioxide); transboundary watercourses (generally and e.g. the Danube); oceans and seas; fauna and flora with the related habitats and more generally the Earth's biological diversity; mountainous and other areas of special concern (like the Alps or the Carpathians; Antarctic); space; environmental impacts of industrial accidents, international waste shipments, environmental sound management of chemicals etc.

Conservation of Earth's forests together with the sustainable use of forest resources is one of the most critical components for which a global legal instrument could not be developed because of the strong diversion of the interests of the various parties.

For easy reference the UNEP keeps track of developments related to these agreements (UNEP, 1996; 2007) and similarly, we also issued such publications in Hungary on environmental agreements of national importance (Faragó, 2006; 2000).

As mentioned before, the *common but differentiated responsibility and the equity issues* were dealt with regularly in the framework of the new multilateral agreements after the 1992 summit (UNCED), however, more concrete indication of reasons for the distinct responsibilities, rights and needs was usually avoided. The situation is even simpler concerning the interests of future generations: a general reference is made to protect environment for present and future generations, wherever it is applicable (change in state of the global environment, unsustainable use and degradation of natural resources).

Typically in the case of the ozone layer protection, the corresponding 1985 Vienna Convention and its 1987 Montreal Protocol address "only" higher responsibility of the developed countries and the development needs of the developing countries by establishing a special fund financed by contributions from the "non-developing" parties to assist the developing parties which have a very low responsibility for this global hazard as it is expressed in terms of low consumption of the ozone depleting substances.

Similar formulations and solutions can be found in a series of agreements adopted since the early 1990s, however, besides the distinction of the special situation and responsibilities of

the developed and developing countries, in addition, the specific situation of the so-called "transition countries" was also taken into consideration.

We refer below only to two cases when much more explicit formulations were adopted. A governing principle of the 1992 UN Framework Convention on Climate Change is the one on the "common but differentiated responsibility" from the Rio Declaration, however, it already gives an explicit explanation to it (UNFCCC, 1992): "Noting that the largest share of historical and current global emissions of greenhouse gases has originated in developed countries, that per capita emissions in developing countries are still relatively low and that the share of global emissions originating in developing countries will grow to meet their social and development needs" ; .. .. Accordingly .. "1. The Parties should protect the climate system for the benefit of present and future generations of humankind, on the basis of equity and in accordance with their common but differentiated responsibilities and respective capabilities. Accordingly, the developed country Parties should take the lead in combating climate change and the adverse effects thereof. 2. The specific needs and special circumstances of developing country Parties, especially those that are particularly vulnerable to the adverse effects of climate change, and of those Parties, especially developing country Parties, that would have to bear a disproportionate or abnormal burden under the Convention, should be given full consideration."

The 1985 Basel Convention tried to put an end to the irresponsible practice of transboundary movement of hazardous wastes primarily to the developing countries and their disposal, which caused serious health and environmental problems. The preamble of the convention already referred to "usual" direction of these movements: "Recognizing also the increasing desire for the prohibition of transboundary movements of hazardous wastes and their disposal in other States, especially developing countries, ... Taking into account also the limited capabilities of the developing countries to manage hazardous wastes and other wastes". It was followed a decade later with a rigid amendment according to which the developed country parties committed themselves *not* to transport hazard wastes to any other country.

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