

EDITORIAL

THE MEDITERRANEAN ENVIRONMENT WITHIN A HUMAN RIGHTS CONTEXT: TOWARDS THE EMERGENCE OF MEDITERRANEAN ENVIRONMENTAL HUMAN RIGHTS LAW AND THE IMPLEMENTATION OF AN EFFECTIVE ENFORCEMENT MACHINERY THEREFOR

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1. The Four Generations of Human Rights and Inter-generational Environmental Human Rights Law

The environment has been described as a common heritage¹ and a common concern.² Recently environmental discourse is being positioned within a human rights context. Nevertheless, human rights and fundamental freedoms come in various forms.

¹ See Baslar, Kernel. *The Concept of the Common Heritage of Mankind in International Law*. The Hague/Boston/London: Martinus Nijhoff Publishers, 1998. This study by Baslar is an update of his Ph.D. thesis submitted to the University of Nottingham in 1995. See also Elaine Cutajar, *The Common Heritage of Mankind in International Law*, Faculty of Laws, University of Malta, Unpublished LL.D. thesis, June 1995.

² Laura Horn, 'The Implications of the Concept of Common Concern of a Human Kind on a Human Right to a Healthy Environment', *Macquarie Journal of International and Comparative Environmental Law*, (2004) Vol. 1, pp. 233-269, available at http://www.law.mq.edu.au/html/MqJICEL/vol1/vol1-2_4.pdf. Last accessed on 28 December 2009.

Sometimes they are classified in terms of generations: the first, the second, the third and the fourth generation. According to this fourfold classification, the right to a healthy environment falls under the third generation of human rights.³ This classification runs as follows:

- (a) the first generation human rights are the civil and political rights;
- (b) the second generation human rights are the economic, social and cultural rights;
- (c) the third generation human rights are the solidarity rights; and
- (d) the fourth generation human rights are the communication rights.

At other times the human right to the environment is considered to be inter-generational in the sense that it can be protected by more than one generation of human rights, even though there is the tendency to place environmental human rights under the third generational human rights category. But this is not necessarily correct. First generation human rights can be conducive in protecting the environment under, for instance, Article 8 of the European Convention for the Protection of Human Rights and Fundamental freedoms or Article 1 of Protocol 1 to the said Convention.⁴ This is

³ See Oliver C. Ruppel, Third-generation human rights and the protection of the environment in Namibia, available at <http://www.kas.de/upload/auslandshomepages/namibia/HumanRights/ruppel1.pdf>.

⁴ See Nicola Rogers, Environmental Injustice – Redress through the European Court of Human Rights and the Human Rights Act 1998 available at <http://www.elc.org.uk/papers/2000Rogers.doc>. Last accessed on 28 December 2009; Philippe Sands, Human Rights and the Environment, in United Nations Environment Programme for the Geneva Environment Network, Human Rights and the Environment: Proceedings of a Geneva Environment Network Roundtable, 2004, available at <http://www.environmenthouse.ch/docspublications/reportsRoundtables/Human%20Rights%20Env%20Report.pdf>. Last accessed on 28 December 2009; Case Law by the European Court of Human Rights, available at <http://righttoenvironment.org/default.asp?pid=91>. Last accessed on 28 December 2009 and Mariana T. Acevedo, 'The Intersection of Human Rights and Environmental Protection in the European Court of Human Rights', New York University Environmental Law Journal, Volume 8, No. 2, 2000, pp. 437-496, available at <http://www1.law.nyu.edu/journals/envtllaw/issues/vol8/2/v8n2a1.pdf>. Last accessed on 28 December 2009.

supported by case law of the European Court of Human Rights.⁵ So the human right to the environment need not necessarily be boxed solely in the third generational human rights category.

2. Recognition of Environmental Human Rights Law in Regional Treaty Provisions

The Mediterranean Region has not produced a regional treaty recognizing any of these four generational human rights; nor has it recognized specifically a human right to the environment as is the position with the African Charter of Human and Peoples' Rights;⁶ the American Convention on Human Rights⁷ and the Aarhus Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters.⁸ Indeed, the African Charter aforesaid provides in Article 24 thereof that:

All peoples shall have the right to a general satisfactory environment favourable to their development.⁹

⁵ See Manual on Human Rights and the Environment – Principles emerging from the case law of the European Court of Human Rights, Strasbourg: Council of Europe Publishing, 2006.

⁶ For a discussion on the African Charter in the light of the human right to the environment, see Solomon Tamarabrahkemi Ebobrah, Towards effective realisation of the right to a satisfactory environment in the African Charter on Human and Peoples' Rights: A case for domestic horizontal application, LL.M. (Human Rights and Democratisation in Africa) dissertation, University of Pretoria, 27 October 2006, available on line at http://repository.up.ac.za/upspace/bitstream/2263/1210/1/ebobrah_st_1.pdf. Last accessed on 27 December 2009.

⁷ See Report of the General Secretariat Pursuant to AG/RES 1819 (XXXI-O/01) Human Rights and the Environment, Committee on Juridical and Political Affairs, Permanent Council of the Organization of American States, 4 April 2002, available at <http://www.oas.org/consejo/cajp/docs/cp09486e04.doc>. Last accessed on 28 December 2009.

⁸ See Stephen Stec and Susan Casey-Lefkowitz, The Aarhus Convention: An Implementation Guide, New York and Geneva: Economic Commission For Europe, 2000.

⁹ Henry J. Steiner and Philip Alston, International Human Rights in Context: Law, Politics, Morals, Oxford: Oxford University Press, 2000, p. 1453. The legal foundation to the right for a satisfactory environment is discussed in the Ksentini Report. See Fatma Zohra Ksentini, Review of Further Developments in Fields with which the Sub-Commission has been concerned: Human Rights and the Environment, United Nations Economic and Social Council, 6 July 1994, E/CN.4/Sub.2/1994/9, available at <http://www.unhchr.ch/Huridocda/Huridoca.nsf/0/eeab2b6937bcca18025675c005779c3?Opendocument>. Last accessed on 28 December 2009.

The American Convention aforesaid provides in Article 11 of the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (the Protocol of San Salvador) that:

- (1) Everyone shall have the right to live in a healthy environment and to have access to basic public services.
- (2) The States Parties shall promote the protection, preservation and improvement of the environment.¹⁰

The Aarhus Convention aforesaid – which was concluded under the auspices of the United Nations Economic Commission for Europe – recognises the right to a healthy environment in Article 1 thereof which provides as follows:

In order to contribute to the protection of the right of every person of present and future generations to live in an environment adequate to his or her health and well-being, each Party shall guarantee the rights of access to information, public participation in decision-making, and access to justice in environmental matters in accordance with the provisions of this Convention.

Needless to say, these three instruments – laudable as they might be in codifying a human right to the environment – remain regional instruments applicable only to the geographical region for which they are intended and, naturally, are not addressed to the Mediterranean region although, admittedly, in the case of the Aarhus Convention, some European Mediterranean States are bound by the provisions of this European Convention. On the other hand, Mediterranean countries that are Member States of the European Union are, since December 2009, bound by the provisions of the Lisbon Treaty¹¹ which takes on board both the European

¹⁰ The San Salvador Protocol is available at <http://www.oas.org/juridico/English/treaties/a-52.html>. See also the Committee on Juridical and Political Affairs, Permanent Council of the Organization of American States, Report of the General Secretariat Pursuant to AG/RES. 1819 (XXXI-O/01) Human Rights and the Environment, 4 April 2002, available at <http://www.oas.org/consejo/CAJP/docs/CP09486e04.doc>. Last accessed on 28 December 2009.

¹¹ For the text of the Lisbon Treaty see the Official Journal of the European Union, Volume 50, 17 December 2007, C 306 01, available at http://europa.eu/lisbon_treaty/full_text/index_en.htm. Last accessed on 28 December 2009.

Convention on Human Rights and Fundamental Freedoms¹² and the EU Charter of Fundamental Rights 2000.¹³ As already stated the European Court of Human Rights has recognised the human right to the environment in its case law but the Charter goes further than that as it incorporates the right within the text of the Charter itself which, with the Lisbon Treaty,¹⁴ is no longer soft law but has transformed itself into hard law. Indeed, Article 37 of the Charter reads as follows:

A high level of environmental protection and the improvement of the quality of the environment must be integrated into the policies of the Union and ensured in accordance with the principle of sustainable development.

¹² Article 8 of the Lisbon Treaty replaces Article 6 of the Treaty on European Union with a new provision. Article 6, paragraphs 2 and 3, states that:

'2. The Union shall accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms. Such accession shall not affect the Union's competences as defined in the Treaties.

3. Fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms and as they result from the constitutional traditions common to the Member States, shall constitute general principles of the Union's law.'

For the text of the European Convention for the Protection of Human Rights and Fundamental Freedoms see conventions.coe.int/treaty/EN/Treaties/html/005.htm.

¹³ Article 8 of the Lisbon Treaty replaces Article 6 of the Treaty on European Union with a new provision. Article 6, paragraph 1, state that:

'1. The Union recognises the rights, freedoms and principles set out in the Charter of Fundamental Rights of the European Union of 7 December 2000, as adapted at Strasbourg, on 12 December 2007, which shall have the same legal value as the Treaties.

The provisions of the Charter shall not extend in any way the competences of the Union as defined in the Treaties.

The rights, freedoms and principles in the Charter shall be interpreted in accordance with the general provisions in Title VII of the Charter governing its interpretation and application and with due regard to the explanations referred to in the Charter, that set out the sources of those provisions.'

For the text of the Charter see the *Official Journal of the European Communities*, 18.12.2000, C 364/1-22, available at <http://www.oas.org/juridico/English/treaties/a-52.html>. Last accessed on 28 December 2009.

¹⁴ The Lisbon Treaty came into force on 1 December 2009. See http://europa.eu/lisbon_treaty/index_en.htm. Last accessed on 28 December 2009.

Furthermore, the Charter has its own limitations: it is not an international instrument and thus applies only to EU Member States – it does not extend to North Africa and the Middle East and hence the southern part of the Mediterranean does not enjoy the benefit of such a legal regime. Hence the need arises for Mediterranean States to conclude a regional multilateral agreement amongst them on the lines of the African, American and European regions. Such a treaty would recognize, define and amplify the constitutive ingredients of the human right to the environment in the Mediterranean region together with establishing an effective enforcement machinery therefor. It is debatable how one can go about in achieving this aim because various options can be conceived but whichever option is adopted it would need at least the concurrence of a majority of Mediterranean states. One such way of addressing this *vexata questio* is by agreeing to the conclusion of a treaty in its own right specifically addressing the human right to the environment in the Mediterranean region. Although at face value one might ask what should such treaty regulate and address, reference can be made here to Article 24 of the African Charter, Article 11 of the Additional Protocol to the American Convention and to Article 37 of the EU Charter. If these do not provide sufficient detailed material for the drafting of treaty provisions, then regard should be had to the Draft Principles on Human Rights and the Environment, 1994 which can easily be codified therein.¹⁵

Once that this treaty is concluded for the Mediterranean region, the next step would be to cater for such human right at the international level unless this can be done concurrently or in lieu of the above proposed Mediterranean treaty arrangement. The United Nations Environment Programme (UNEP) can, through its Regional Seas Programme,¹⁶ start off the regional initiative and take the lead once such Programme already caters for a treaty structure. What would be required is the conclusion of an Additional Protocol on the Human Right to the Environment under the Convention for the Protection of the Marine Environment and the Coastal region of

¹⁵ E/CN.4/Sub.2/1994/9, Annex I (1994) available at <http://www1.umn.edu/humanrts/instree/1994-dec.htm> and <http://www.unhchr.ch/Huridocda/Huridoca.nsf/0/eeab6937becaa18025675c005999c3?Opendocument>.

Last accessed on 27 December 2009.

¹⁶ For the Regional Seas Programme of UNEP see <http://www.unep.org/regionalseas/>. Last accessed on 28 December 2009.

the Mediterranean 1995.¹⁷ The World Commission on Sustainable Development¹⁸ can also concurrently take the process to the international level. The time is now ripe to make this quantum leap in International Environmental Human Rights Law. Indeed, consciousness on the need to safeguard the environment began in the early sixties until it fully matured in the last decade or so. There is no doubt that the United Nations and its specialised agencies have played a pivotal role in the development of International Environmental Law and International Law of Sustainable Development. Development and environment have been merged together from the Stockholm Conference¹⁹ to the Rio Conference²⁰ up to the Johannesburg Summit²¹ – these conferences have all

¹⁷ For the text of this Convention see http://195.97.36.231/dbases/webdocs/BCP/bc95_Eng_p.pdf. Last accessed on 28 December 2009.

¹⁸ For the Commission on Sustainable Development, see http://www.un.org/esa/dsd/csd/csd_aboutcsd.shtml. Last accessed on 28 December 2009. It is to be noted that the Commission on Sustainable Development has a Mediterranean regional commission – the Mediterranean Commission on Sustainable Development – see for further information <http://www.unepmap.org/index.php?catid=001017002&module=content2>. Last accessed on 28 December 2009.

¹⁹ The Stockholm Conference adopted the Stockholm Declaration of the United Nations Conference on the Human Environment, 16 June 1972. Principle 1 reads as follows: '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, and he bears a solemn responsibility to protect and improve the environment for present and future generations.' See <http://www.unep.org/Documents.Multilingual/Default.asp?DocumentID=97&ArticleID=1503>. Last accessed on 28 December 2009.

²⁰ The United Nations Rio Conference on Environment and Development adopted on 14 June 1992 the Rio Declaration on Environment and Development. Principle 1 reads as follows: 'Human beings are at the centre of concerns for sustainable development. They are entitled to a healthy and productive life in harmony with nature.' See <http://www.unep.org/Documents.Multilingual/Default.asp?DocumentID=78&ArticleID=1163>. Last accessed on 28 December 2009. See also Stanley P. Johnson, *The Earth Summit: The United Nations Conference on Environment and Development*, London: Graham & Trotman, 1993; and Michael Grubb, Matthias Koch, Abby Munson, Francis Sullivan and Koy Thomson, *The Earth Summit: A Guide and Assessment. An Analysis of the Rio '92 UN Conference on Environment and Development*. London: Earthscan Publications Ltd., 1993.

²¹ The Plan of Implementation of the World Summit on Sustainable Development adopted on 4 September 2002 during the World Summit on Sustainable Development held at Johannesburg. It is replete with references to human rights. See http://www.un.org/esa/sustdev/documents/WSSD_POI_PD/English/WSSDPlanImpl.pdf. Last accessed on 28 December 2009.

brought the environment within the realm of development. The next quantum leap is for the conclusion of an international convention bringing the environment and development or, better, sustainable development, within the realm of International Human Rights Law. The merger of these two branches of the law – International Law of Sustainable Development and International Human Rights Law – should together produce the much vaunted international human right to the environment which will thereby provoke the creation of a new branch of law – International Environmental Human Rights Law.

3. International Environmental Human Rights Law: Beneficiaries, Legitimate Opponents and Scope of Application

3.1 The Beneficiaries of the Human Right to the Environment

The human right to the environment is an extensive and inclusive right: it encompasses the rights of both present and future generations to enjoy a healthy environment.²² In this respect, all generations should enjoy such right, whether born or yet to be

²² There is no universal convention which proclaims the right of future generations to a healthy environment as part of its binding provisions. However, at the Mediterranean region level, the Convention for the Protection of the Marine Environment and the Coastal Region of the Mediterranean 1995 (which was originally known as the Barcelona Convention for the Protection of the Mediterranean Sea Against Pollution and was adopted on 16 February 1976) was amended on 10 June 1995 with the relative amendments entering into force on 9 July 2004. It has enshrined this right in its main text thereby rendering it mandatory. Article 4(2) reads as follows:

'The Contracting Parties pledge themselves to take appropriate measures to implement the Mediterranean Action Plan and, further, to pursue the protection of the marine environment and the natural resources of the Mediterranean Sea Area as an integral part of the development process, meeting the needs of present and future generations in an equitable manner.' Note also that the soft law instrument entitled 'Universal Declaration of Future Generation Rights of 1994' contains in its very first provision the following: 'Persons belonging to future generations have the right to an uncontaminated and undamaged Earth, including pure skies; they are entitled to its enjoyment as the ground of human history, of culture and of social bonds that make each generation and individual a member of one human family.' See <http://unesdoc.unesco.org/images/0010/001001/100169eo.pdf>. Last accessed on 28 December 2009.

born. This necessarily implies that for the right to be effectively guaranteed a curator (or some other similar institution) should be established to safeguard the rights of future generations.²³

3.2. The Legitimate Opponent to the Human Right to the Environment

Against whom should such human right to the environment be opposable? Essentially there are three principal actors in this sphere of environmental responsibility:

- (a) States;
- (b) Private corporations; and
- (c) Individuals.

Whatever treaty arrangement is adopted, the legitimate opponent against whom such right is opposable does not limit itself only to states but even to private corporations. Hence the treaty in question should ensure that non-state actors are also brought into its fold. Corporate social responsibility is an integral part of sustainable development and private corporations should be held accountable even when they breach the human right to the environment.²⁴ This thus entails the requirement of a national court to deal with offending national private corporations without having the need to have recourse to an international or regional tribunal to achieve just satisfaction.

²³ For a national law which establishes a Commission For Future Generations, see The Knesset, The Israeli Parliament, Commission For Future Generations, undated, available at <http://knesset.gov.il/sponsorship/future/eng/overview.pdf>. Last accessed on 28 December 2009. See also Edith Brown Weiss, *In Fairness To Future Generations: International Law, Common Patrimony, and Intergenerational Equity*, Tokyo: The United Nations University, 1989; and Kevin Aquilina, 'Relevance of Rio Declaration, Agenda 21 and the Commission on Sustainable Development to a Guardian for Future Generations' in Emmanuel Agius and Salvino Busuttill with Tae-Chang Kim & Katsuhiko Yazaki (eds.) *Future Generations & International Law*, London, Earthscan Publications, 1998, pp. 117-126.

²⁴ For a discussion of corporate social responsibility see Ayesha Dias, *Human Rights, Environment and Development: With Special Emphasis on Corporate Accountability*, Human Development Report 2000 Background Paper, available at <http://hdr.undp.org/en/reports/global/hdr2000/papers/ayesha%20dias%20.pdf>. Last accessed on 28 December 2009.

3.3. *The Actual Scope of the Human Right to the Environment*

What should, in concrete terms, the human right to the environment comprise? One author²⁵ has identified the following constitutive elements of this right:

- the right to a healthy environment;²⁶
- the right to life;²⁷
- the right to health;²⁸ and
- the right to be free of interference of one's home and property.²⁹

²⁵ See online resource entitled 'Chapter Sixteen: Human Rights and the Environment' related to David Hunter, James Salzman and Durwood Zaelke, *International Environmental Law And Policy*, Foundation Press, 2007, available at <http://www.wcl.american.edu/environment/iel/sixteen.cfm>. Last accessed on 28 December 2009.

²⁶ For a discussion of this right see Marvic Abdilla, *The Human Right to a Healthy Environment in International Law*, Faculty of Laws, University of Malta, Magister Juris in International Law dissertation, September 1999; and Sueli Giorgetta, 'The Right to a Healthy Environment, Human Rights and Sustainable Development', in *International Environmental Agreements: Politics, Law and Economics* 2: 173-194, 2002. For a rebuttal of the arguments raised against the human right to a quality environment see Susan Glazebrook, 'Human Rights and the Environment', *Victoria University of Wellington Law Review* (2009) 40 VUWLR 293 available at <http://courtsfnz.govt.nz/speechpapers/Human%20Rights%20and%20the%20Environment.pdf>. Last accessed on 28 December 2009.

²⁷ See Svitlana Kravchenko, 'Right to Carbon or Right to Life: Human Rights Approaches to Climate Change', *Vermont Journal of Environmental Law*, Volume 9, 2008, pp. 513-547 available at <http://www.vjel.org/journal/pdf/VJEL10069.pdf>. Last accessed on 28 December 2009.

²⁸ See Sarah Friedmann, 'The Right to Health', in *Human Rights and Human Welfare*, pp. 3-19, available at <http://www.du.edu/korbel/hrhw/digest/health/right.pdf>. Last accessed on 28 December, 2009 and David Gillespie, 'Human Rights, Health and the Environment', in *Human Rights & Human Welfare*, pp. 83-104, available at <http://www.du.edu/korbel/hrhw/digest/health/environment.pdf>. Last accessed on 28 December 2009; Office of the United Nations High Commissioner for Human Rights and World Health Organization, *The Right to Health, Fact Sheet No. 3*, June 2008, available at <http://www.ohchr.org/Documents/Publications/Factsheet31.pdf>. Last accessed on 28 December 2009.

²⁹ See *Is Article 8 of the ECHR Useful in the Protection of the Environment?* Available at <http://tltt.strath.ac.uk/media/alias/bulletins/diploma-%20legal%20research%201.doc>. Last accessed on 28 December 2009.

Other authors have identified possible legal bases for environmental rights in international human rights treaties.³⁰

Although these may be valid subdivisions of the human right to the environment, they tend to focus upon this human right from an anthropocentric perspective leaving out the ecological dimension of things. Arguably this is because the author/s in question is looking at the environment from a strictly human rights point of view. Nevertheless, the human right to the environment should go beyond this traditional formulation of the right and encompass also future generational rights, for future generations are after all human beings as well. Not only so but this traditional formulation of the right can be critiqued on the additional ground that it does not take on board recent principles which have been articulated in the realm of International Environmental Law and which have made the passage from soft law to hard law. We have here in mind, amongst others, the following:

- the precautionary principle;³¹
- the polluter pays principle;³²
- the principle of rectification at source;³³
- the principle of conservation;³⁴
- the principle of sustainable development;³⁵

³⁰ See Subin Nijhawan, *A Human Right to a Clean Environment*, available at <http://www.subin.de/environment.pdf>. Last accessed on 28 December 2009; Earthjustice Issue Paper, *Human Rights and the Environment: Materials for the 60th Session of the United Nations Commission on Human Rights, Geneva, 15 March – 23 April 2004*, available at <http://www.earthjustice.org/library/references/2004UNreport.pdf>; Emilie Filmer-Wilson and Michael Anderson, *Integrating Human Rights into Energy and Environment Programming: A Reference Paper*, May 2005, available at http://www.undp.org/governance/docs/HR_Pub_environmentprog.pdf. Last accessed on 28 December 2009.

³¹ See David Freestone, 'The Precautionary Principle' in Robin Churchill and David Freestone (eds.), *International Law and Global Climate Change*, London: Graham & Trotman, 1991, pp. 21-39.

³² See Henri Smets, 'The Polluter Pays Principle in the Early 1990s' in Luigi Campiglio, Laura Pineschi, Domenico Siniscalco and Tullio Treves, *The Environment After Rio: International Law and Economics*, London: Graham & Trotman, 1994, pp. 131-147.

³³ See Ludwig Krämer, *EEC Treaty And Environmental Protection*, London: Sweet & Maxwell, 1990, p. 62.

³⁴ See Alexandre Kiss and Dinah Shelton, *Manual of European Environmental Law*, Cambridge: Cambridge University Press, 1993, pp. 36-37.

³⁵ See Michael Deckeris, *The Law of Sustainable Development: General Principles*.

- the principle of responsible environment governance;³⁶
- the principle of treating pollution as closely as possible to the source;³⁷
- the principle of preventive action;³⁸ and
- the duty not to cause environmental damage.³⁹

There are also other relevant tools which a human right to the environment should comprise such as drawing up environmental impact statements,⁴⁰ holding a strategic environmental assessment,⁴¹ carrying out public participation consultations⁴² and providing access to environmental information.⁴³

A report produced for the European Commission. Luxembourg: Office for Official Publications of the European Communities, 2000, available at http://www.pik-potsdam.de/avec/peyresq2003/talks/0917/sillence/background_literature/sustlaw.pdf. Last accessed on 28 December 2009. See, in particular, Chapter 7 which sets out the 'General Principles of the Law of Sustainable Development'.

³⁶ See Adlan Al Hardallu, *Environmental Guidance*, available at <http://www.worldsummit2002.org/texts/SudanAdlan-P.pdf>. Last accessed 28 December 2009.

³⁷ See Article 16, paragraph 3 of the Waste Framework Directive 2008/90/EC, available at http://www.epa.ie/downloads/advice/waste/municipalwaste/EU_New_Waste_Framework_Directive_2008-98-EC.pdf. Last accessed on 28 December 2009.

³⁸ See Philippe Sands, *Principles of International Environmental Law, Volume 1: Frameworks, standards and implementation*, Manchester: Manchester University Press, 1995, pp. 194-197.

³⁹ See Francesco Francioni and Tullio Scovazzi, *International Responsibility for Environmental Harm*, London: Graham & Trotman, 1991.

⁴⁰ See Peter Wathern (ed.), *Environmental Impact Assessment: Theory and Practice*, London: Routledge, 1988; and *Environmental Impact Assessment Legislation: Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovak Republic, Slovenia*, London: Graham & Trotman, 1994.

⁴¹ See Office of the Deputy Prime Minister, *A Practical Guide to the Strategic Environmental Assessment Directive*, London: Office of the Deputy Prime Minister, 2005.

⁴² See the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters done at Aarhus, Denmark on 25 June 1998 available at <http://www.unece.org/env/pp/documents/cep43e.pdf>; Directive 2003/35/EC of 26 May 2003 available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2003:156:0017:0024:EN:PDF>; and the Submission by the U.N. Economic Commission for Europe, Human Rights and the Environment: The Role of Aarhus Convention, available at <http://www.unece.org/env/pp/HUMAN%20RIGHTS/ECE%20input%20to%20OHCHR%20report.doc>.

⁴³ Ibid.

4. Towards Establishing An Effective Enforcement Machinery

The advantage with the extant regional mechanisms of human rights is that each has its own enforcement machinery. In the case of the European Convention on Human Rights there is established the European Court of Human Rights;⁴⁴ the Inter-American Convention on Human Rights has the Inter-American Commission and the Inter-American Court;⁴⁵ the African Charter of Human and Peoples' Rights has the African Commission on Human and Peoples' Rights.⁴⁶ But the Mediterranean Region has no such enforcement mechanism. Hence, the problem which arises in this context is how can the human right to the environment, if incorporated within a treaty provision, be implemented through an effective enforcement machinery.

One can argue in favour of the establishment of a Mediterranean Regional Court. That might however make sense if that Court were to have a wider jurisdiction than simply adjudicating upon the human right to the environment. In all probability such a proposal might not find favour with Mediterranean States due to policy issues that this proposal raises – especially with those countries who do not have an adequate human rights enforcement mechanism and culture – and the costs involved in order to finance the Court's operations: salaries for judges and staff; hiring or purchasing of premises plus relative upkeep; costs incurred for administering the court; etc. Of course, if a Mediterranean State were to decide to offer premises and to shoulder the burden by meeting out the costs for the functioning of this Court, that might be another thing altogether. Again, it could be that each Mediterranean State might decide to incur the financial burden of its nationals (Judges and Staff members) working at the Court with a cost sharing arrangement to be made between the host country – which will initially fork out the necessary expenditure and then recouping it on a proportionate basis at a later stage, say at the end of each calendar year, from the other collaborating states. These are all options which Mediterranean states can go for.

⁴⁴ See <http://www.echr.coe.int/ECHR/EN/Header/Case-Law/HUDOC/HUDOC+database/>. Last accessed on 28 December 2009.

⁴⁵ See http://www.oas.org/en/topics/human_rights.asp. Last accessed on 28 December 2009.

⁴⁶ See <http://www.achpr.org/>. Last accessed on 28 December 2009.

Mediterranean States can also adopt other options such as taking no action at the regional level in favour of establishing a World Environmental Human Rights Court or Tribunal. There are quite a number of extant courts or tribunals such as the International Court of Justice, the International Tribunal for the Law of the Sea, the International Criminal Court and one of these Courts or Tribunals could be tasked with the additional burden of performing the duties of a World Environmental Human Rights Court unless and until, of course, a separate court were to be established specifically for this purpose, to be styled the 'World Environmental Human Rights Court'. These are all options which the Mediterranean States and the international community can investigate and consider.

5. The Jurisdiction of the World Environmental Human Rights Court

The World Environmental Human Rights Court should be an international court. But it can also have regional branches, something on the lines of the world Commission on Sustainable Development. The world Commission on Sustainable Development has a number of Regional Commissions spread all over the world's regions. In the case of the Mediterranean Region, there is the Mediterranean Commission on Sustainable Development already referred to above. The World Environmental Human Rights Court can emulate this model and have its own regional courts. Where there already exists such a structure at regional level that structure could be used without the need of creating new structures. Such would be the case with the European Court of Human Rights, the Inter-American Commission and Court of Human Rights and the African Commission on Peoples and Human Rights. Where no such structures exist or where no extant Courts or Tribunals can be entrusted with such a task, then the region concerned would have to either establish such a regional structure or else rely on the World Environmental Human Rights Court. But having a Court in itself is not enough, all these structures have to be backed by an adequate treaty which ensures that the decisions of the World Environmental Human Rights Court are implemented by all United Nations Member States. Should a State Party default from complying with the World or Regional Court's decisions, then the matter should be referred to the Security Council. Once

again this procedure might create problems especially if one of the permanent members of the Security Council were to veto the relative Resolution. So it is being proposed that when drafting the treaty the permanent members of the United Nations Security Council should declare that in so far as this treaty provision is concerned, they are renouncing themselves from the right to veto, that they will not exercise such veto in these cases and, should a permanent member exercise such veto, then the exercise of that veto shall be null and void and without any effect at law. In this way the United Nations Charter would not need to be amended and the new treaty will exclude from its application the provisions of Article 27, paragraph 3, of the United Nations Charter regulating the right to veto a Security Council decision.

The World or Regional Court should have jurisdiction to receive complaints against any Member State of the United Nations, against any organ of the United Nations, against any specialised agency of the United Nations, against international private corporations and other entities having international legal personality. Such complaint may be lodged by a Member State of the United Nations, any one of the six principal organs of the United Nations, a specialised agency of the United Nations, a regional economic community or other regional organisation of states recognised by the treaty for this purpose or by a majority vote of the United Nations General Assembly or by an international environmental non-governmental organization such as World Wildlife Fund, Friends of the Earth International, Greenpeace International as well as international human rights international non-governmental organisations such as Amnesty International, Human Rights Watch, StateWatch, Transparency International and others to be specifically recognised by a majority of votes by the United Nations General Assembly.

A transgressing state should be ordered to carry out such remedial action which the Court may direct and any fines inflicted upon states should be levied into an Environmental Fund. This Fund shall be administered by UNEP for bettering the global environment.

6. The Contributions in this Volume

The contributions in this volume all strive to link, in one way or another, environmental law to human rights law with specific reference to the Mediterranean region, even though the arguments

brought in these papers need not necessarily be restricted to the Mediterranean region and can well be internationalised.

In this issue we have attempted to identify three aspects for this Journal: the Mediterranean, the Environment and Human Rights. All contributors have sought to address at least one or more of these aspects. This Special Issue thus focuses on the right to the environment as a human right within the Mediterranean region. As can be seen from the various contributions to this volume, these three aspects can intermingle themselves in various ways. But what unites all these contributions together is that they are all interested in how to bequeath a better world to future generations than the one we have inherited from our ancestors. This is by no means an easy task to achieve and, therefore, we thank all contributors for the arduous task they have set themselves to achieve.

This special issue of the Mediterranean Journal of Human Rights is divided into two parts: Part I dealing with general principles of environmental law and Part II which is more case studies oriented.

6.1. The General Principles of Environmental Law

In Part I of the special issue we have grouped the following seven papers under one theme:

- **Anna Lucia Valvo**, The Evolution of Environmental International Law
- **Louise Spiteri**, The Duty to Protect and Preserve the Environment
- **Nicolae Drăgușin**, How Children Gave Birth to their Parents: Explaining Generational Equity
- **Edward A. Mallia**, Rights, Environment and Sustainability;
- **Calogero Guccio and Anna Mignosa**, Sustainability, Management and Conservation of Natural and Cultural Heritage for Development: a Euro-Mediterranean Perspective
- **Andrea Gallina**, Mediterranean Asymmetries
- **Paolo Bargiacchi**, Environmental Democracy and International Law: A Brief Sketch
- **Salvatore Casabona**, Environmental Justice *E Diritto Comunitario: Prime Riflessioni Sulla Giurisprudenza Della Corte Di Giustizia*

Part I begins by Anna Lucia Valvo which introduces the historical evolution of International Environmental Law, how this recent branch of International Law regulating the environment has progressed over such a short span of time. She neatly ties the evolution of International Environmental Law to European Union Environmental Law and to Human Rights and the Environment.

Having put the environment in its historical legal perspective, the second paper by Louise Spiteri focuses on the duty to protect and preserve the environment. She argues that the protection and preservation of the environment has always been an integral part of culture and religion of various civilizations. However, in our day a new element has been introduced which does not simply look at the past but which focuses on future generations.

The latter point is, in fact, the main theme of Nicolae Drăgușin's paper which discusses inter-generational equity, that is, how to make sense of rights and duties discourse and generational equity in a historical milieu. Inter-generational equity has today been expressed through the concept of sustainable development.

It is precisely this concept that Edward A. Mallia investigates in his paper dealing with rights, environment and sustainability. He analyses clashes of rights of various groups in the environment-development conundrum which he sees sorting out through the realization of climate change effects.

The concept of sustainability is further developed by Calogero Guccio and Anna Mignosa who study sustainable development from a Euro-Mediterranean perspective by applying this concept to the natural and cultural heritage. They look at projects which have been developed in the Mediterranean for using heritage to enhance the development of the Mediterranean area but also delve into the strategies used and come up with suggestions to increase the efficacy of future policies in this realm.

The Mediterranean is further considered by Andrea Gallina who takes stock of the 15 years of Euro-Mediterranean cooperation. Pressures for job creation and economic integration has a direct effect on the Mediterranean environment. Hence these pressures have to be factored in at attempting to protect and preserve the Mediterranean environment. Without a solution to these problems it is not easy to ease the tensions on the Mediterranean environment.

The point that Environmental Law is an international phenomenon has already been noted in the above papers. But Paolo

Bargiacchi's contribution lies in the fact that he has managed to intertwine the concept of environmental democracy into international environmental law. He explores the co-relation between both domains and illustrates how environmental democracy has evolved mainly from the 1972 Stockholm Conference on the Human Environment till present days.

Finally, this part concludes with a study on environmental justice from an European Union case law perspective. Salvatore Casabona first explains what he understands by "environmental justice", then examines the application of such concept in the United States of America. The main focus of his paper is however that of providing an examination and study the jurisprudence of the European Court of Justice on the subject of environmental justice.

6.2. *The Case Studies*

In Part II of the special issue we have grouped the following eight papers under one theme:

- **Aldo Zammit Borda**, Ecological Considerations Relating to the Destruction of Chemical Weapons
- **Joseph G. Mallia**, English and Education in English in Rural Egypt: A Human Right or an Imposition?
- **Ferdinando Laghi** and **Pasquale Laghi**, *Tutela Dell'Ambiente, Vertenze Territoriali e Diritti Fondamentali: Lo Smaltimento dei Rifiuti Solidi Urbani e la Produzione di Energia da Fonti Rinnovabili tra Diritto Comunitario e Decentralizzazione Statuale*
- **Joanne Bianco Muscat**, Groundwater Overextraction in the Mediterranean Region: The Right for Potable Water for Future Generations
- **Jotham Scerri-Diacono** and **Saviour Vassallo**, Understanding the Opportunities of Climate Change: A Legal Perspective
- **Joseph Falzon**, Auditing the Development Planning Process – A Five Year Experience in Malta
- **Claudio Costantino**, *La tutela multilevel dei diritti della salute e dell'ambiente nella material dell'inquinamento elettromagnetico*
- **Bruno Amoroso**, Citizen Well-being and Social Cohesion for the Common Good: From Welfare State to Welfare Society

Aldo Zammit Borda's paper opens Part II of the special issue. It is a case study focusing on the ecological considerations relating to the destruction of chemical weapons. He studies the contribution to achieving this aim through the Chemical Weapons Convention even if, unfortunately, not all the international community is a party to this Convention. This paper clearly sets out the risks posed by chemical weapons both to humanity and the environment.

A different case study is that afforded by Joseph G. Mallia who investigates the possibility of an emergence or imposition of a new human right, that of English and education in English in rural Egypt. This paper argues that the lack of holistic understanding of the environment and local agro-ecosystems invariably results in a variety of factors and scenarios which impede the right to sufficient food production, a healthy environment and a decent standard of living.

On a different topic, Ferdinando Laghi and Pasquale Laghi write on the protection of the environment, territorial disputes and fundamental rights in the light of urban solid waste disposal and energy production through renewable sources both at European Union Law level, state level and regional level. The case study in this paper lies in the examination of an electric power station in a national park in the south of Italy demonstrating the gap which exists between the law on the one hand and its effectiveness on the other.

Over-extraction of groundwater in the Mediterranean region is linked to the right for potable water for future generations by Joanne Bianco Muscat. She undoubtedly considers one of the most important resource for humanity and for the environment. Without water nothing lives on the planet earth. Hence this case study is indispensable in such a collection of papers on environmental law and human rights within the Mediterranean area. Unfortunately, as this paper points out, not much is being done to curb the abuse of over-extraction of groundwater in the Mediterranean region.

Climate change is currently considered to be the most pressing problem in international environmental law. Indeed, it is "the" problem par excellence. Hence the paper by Jotham Scerri-Diacono and Saviour Vassallo is very apposite in a collection of papers dealing with case studies on the environment. Indeed, what better case study can be written if not on a very topical debate such as the climate change issue. This contribution focuses on the leading convention in this area – the United Nations Framework Convention on Climate Change, its Kyoto Protocol and the European Union's contribution

in this field. Unfortunately more still needs to be done to overcome this global challenge to the extinction of the human species.

Joe Falzon's paper is a unique paper. It brings together the experience gained by the author who has served as Audit Officer of the Malta Environment and Planning Authority. In such capacity he has had the opportunity to introspect the workings of this Authority not much from a managerial or accounting viewpoint but, more importantly, from a sustainable development perspective. The incisive reports which he has drawn up during the tenure of his aforesaid office recounts the various shortcomings of the said Authority, shortcomings which nevertheless seem to be on the increase rather than on the decrease. A red light has been lit in the realm of sustainable development planning in the Maltese islands which raises various questions which call for a proper answer.

Claudio Constantino's contribution to this special issue focus primarily on electromagnetic pollution – undoubtedly a new hazard created by the human species in the technological era – viewed more from a practitioner's point of view, that is, a person who is studying how the case law of the Constitutional Court and Administrative Judges has evolved in this area. This novel phenomenon has indicated that much reliance has to be made on case law in the lack of a clear norm which regulates in detail electromagnetic pollution and, especially, its harmful effects viewed from a health law perspective.

The special issue concludes by Bruno Amoroso's paper dealing with the welfare system and its transformation into a welfare society. It focus on the link between resources and the common good, the latter term encompassing within its fold the precautionary principle referred to above in this Editorial and the principle of finiteness of the planet earth's resources. The principle of the common good pervades the law, not only International Environmental Law but all the ambit of the law. It guides legislators in their law making process and is relevant in all areas of the law, more so in international environmental law which deals with the welfare of humanity and the planet we all inhabit. Hence the relevance of the doctrine of the common good to international environmental law discourse.

7. The Way Forward

The Editors of this Special Issue of the Mediterranean Journal of Human Rights would like to thank all the contributors who have

made this issue possible. The Editors would also be glad to see Mediterranean States and the international community working in unison to implement the proposals made both in this Editorial and in the papers included in this special issue of the Mediterranean Journal of Human Rights. Indeed, this Editorial and the concomitant papers are suggesting that states surrounding the Mediterranean region and the international community should act in a proactive manner by adopting the necessary treaties and establishing those enforcement mechanisms that produce concrete results at environmental protection. The time for consciousness raising is now a relic of the past: the next step is to implement concrete proposals bearing immediate results for yesterday's, today's and tomorrow's environmentally pressing problems.