THE INTERPLAY BETWEEN ENVIRONMENTAL PROTECTION AND HUMAN AND PEOPLES’ RIGHTS IN INTERNATIONAL LAW

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THE RELATIONSHIP BETWEEN HUMANKIND AND THE ENVIRONMENT

According to Hans Kelsen’s immanent approach, developed in the “theory of degrees” (Stufentheorie) – a variant of his celebrated pure theory of law – law is a dynamic system of norms whose specific compulsory force depends, irrespective of their content, upon the manner in which they have been created and in which they are linked to a unique and harmonised legal system.1 Until the end of World War II, such a description was apt for international law, whose main rules had been constantly imposed by the dominant forces of the international society. After World War II, in addition to traditional norms based on reciprocal State interests, new principles emerged in the international legal system, founded upon universal values. These values were not corresponding directly to interests belonging to the State as a political entity, but were aimed at furthering the well-being of humanity as a whole. With regard to these new international norms, the view of law evolved largely from the idea illustrated in Kelsen’s Stufentheorie, in the sense that the degree of the compulsory force of a given norm came to be evaluated in terms of the moral relevance of the value protected by the norm itself rather than the manner in which

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it had been created. Nevertheless, the aspect of the unity of norms in a unique and harmonised legal system, which was also part of the theory of degrees, remained unchanged. This interconnection among legal provisions has in fact become more evident in recent times, with the development of a number of principles in various fields of global interest, for example human rights, social development and environmental protection. The interaction between these interests is so intense that a possible conflict could result between the values at stake with respect to their concrete implementation. In particular, growing awareness of the importance of preserving the global environment, traditionally exploited by humans in an infinite variety of ways, has raised questions about the relationship between man and environment, especially with regard to the environmental sustainability of certain human activities and, at the same time, to the degree of interference that environmental values may play in regulating such activities.

The genesis and development of international environmental law lay in two main principles corresponding to different historical phases; the first stage, the protection of the environment at the international level, mainly coincided with the prevention of transboundary harm, as ruled in 1941 by the United States/Canada Arbitral Tribunal in the leading Trail Smelter case. However the environment was not perceived, per se, as a value worthy of protection; its relevance was mainly instrumental to the safeguarding of the economically tangible interests of States.

In the second phase, whose starting point may be traced to 1972, the international community became conscious of the crucial role of the environment in the survival and preservation of the human being. Several international agreements relating to key topics of environmental protection (e.g. climate change, prevention of

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2 See Trail Smelter case, 1941, RIAA 3 (1905).
3 The ideal reference to such a date is due to the fact that the starting point of this phase may be traced back to the adoption of the 1972 Stockholm Declaration of the United Nations Conference on Human Environment, available at (http://www.unep.org/Documents/Default.asp?DocumentID=97&ArticleID=1503).