

Colombia

M. PATINO POSE

H. BEDRAOGO

The environmental crisis is pointing out the limit and the dangers of an autonomous culture, established with independence of the laws that have come about by the building of the alive systems during millions of years. The environmental perspective needs a philosophy that defines with clarity the man's location inside the natural system and that establishes the new ones you limit of the freedom... It is necessary to build new technological balances, to be possible the continuity of the life (Mayan Ángel Augusto Reflections on the Law, the Philosophy and the Environment, 1992).

I- ENVIRONMENTAL LAW EVOLUTION SINCE 1992

Proposal for revision of the environmental World legislation for the first decade of the XXI century to the assistants to the Rio meeting + 10 environmental Lawyers organized by the Centre International de Droit Comparé de l'Environnement".

As the Environmental Health studies the interactions among physical development, natural and as amended environment and populations' groups and therefore search to prevent, to identify, to evaluate, to control and to mitigate the impact of the factors of physical, chemical, biological, psychological and social risk that are derived of these interactions, finds that the best way to achieve it (avoiding this way a catastrophe in the physical and mental health of the planet), it is by means of the installation of a true and effective protection that by itself can be offered by the Environmental Legislation.

The intend then, is to include as a subtitle of the summit the legend "Health and Environment" and to adopt as purpose of the conference the following main focuses from the point of view of the legislative development:

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Health and Environment * Extreme Poverty and Environment *
Globalization and Environment (Harmonization) * Industry and
Environment.

Theoretical introduction

Without a doubt the vision of the Environmental Law has widen when evolving as the science of the regulation and protection from the daily thing to the science of the protection of the dear goods that the creator has given the man such as the air, the water, the space, and other elements of the nature.

Contrary to the traditional dogma which looks after the existing relationships among society, State and citizen, the Environmental Law regulates the vital aspects that arise between the Man and the Nature, reason why it is a new law, with world wide and theological characteristic that would to treat a wide range of matters all of great importance for the human being, developing to the effect the principles of precaution, interdisciplinary, worldwide, polluting - payer, and sustainable development, among others¹.

We refer to such aspects as the necessity of a new classification that regulates at world level the narrow existent relationship between Health and Atmosphere, necessary before the big problems of contamination of articles or of nutritious processes that have given place to cases in extreme preoccupying, as the "of the crazy cows" or the possible cancerigenic consequences of the products transgenic, the risks of genetic manipulation in the human being

Topic that should be treated by Law in a responsible fashion under strict ethical parameters. Equally, we refer to the accumulation of garbage in all the countries, the production decontrolled of chemical and radioactive products, as well as the contamination that is observed in numerous pharmaceutical products.

Therefore the proposals to be included are to be considered amending and innovative legal solutions, and even for some revolutionaries of the law, such as the installation of the objective responsibility in the risky activities for the single fact of carrying them out, with the introduction of the *culpa levissima* notion in many cases of environmental damage, the transfer or reverse of the load of the test of the plaintiff to the State or even to the own defendant, the creation of Fiscal judges and Magistrates specialized in all the countries, with great interdisciplinary preparation, keeping in mind the delicate interests and legal rights that are to be taken into account in the type of controversies in the Environmental Law.

¹ Cf. *The doctrines and developments doctrinal contents in the works*, of the professors Martin MATEO, Guillermo J CANO., Alexander KISS, Shelton, MAGARIÑOS DE MELLO, Michel PRIEUR, Valenzuela FUENZALIDA, Ramón OJEDA, Demetrio LOPERENA, José Juste RUIZ.

On the other hand, it is undeniable the opposing reciprocity between the right of a healthy environmental and the political laws, in such a way that can be said by the same nature of the " Right to a healthy environment", without which can not exist authentically quality of life neither appropriate health that less we are in front of one of the fundamental human rights (DD.HH.), for the contemporary man.

It is then the purpose of the present work to enunciate a series of initiatives either to be adopted or not, in the meeting of National Associations of Environmental Lawyers , RIO + 10 to be inscribed as part of a plan of action of development of the environmental law of the PNUMA (Montevideo program I, II and III and other) conducive to the production of new national laws or the implementation or reformation of Treaties, Conventions, regional Agreements and Declarations on legal aspects and design of policies, keeping in mind the following aspects:

- The evolution and the progress of the Environmental Law.
- The relationships between Law and Human Health.
- The recognition to the indigenous traditional practices that make possible a true of sustainable development.

Juridical objectives that are suggested for the summit Johannesburg 2002

Additionally it is desirable that the Conference develops the following ideas in the formulation of its Declarations, Principles, and Recommendations :

- The elaboration of some Law-environmental limits that you/they allow to structure a World Sanitary and Environmental Plan and some Regional and National.
- The Definition of the Environmental Law to distinguish it of other types of Law (natural resources law, etc).
- The emphasis in the implementation of the national and international environmental laws (enforcement).
- The insistence in the application of national norms already existent, with preference to the expedition of new norms.
- An emphasis in the development of the private International Environmental Law that regulates and controls the production potentially pollutant articles.

General topics to be considered

Keeping in mind that the Environmental Law should defend the man against the excesses of the globalization, and of the mechanization or automation under which can lose their identity and that it owes safeguards their right to work and to the full realization of their mission, what should be studied.:

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- a- The design of necessary juridical, social, economic and political components to achieve the effectiveness of the Environmental Law in all the countries,
- b- The purification of the existent environmental legislation,
- c- The establishment of universal mechanisms of prevention and mitigation of environmental damages,
- d- Alternative Resolution of conflicts - alternative and peaceful solution of litigations by means of arbitration, reconciliation, mediation and others and Harmonization, development and coordination of the Environmental Law in the global environment to arrive to the future formulation of a World Environmental Law in it,
- e- Harmonization of legislations protectors of the shared ecosystems and of the multinational basins (Amazonía),
- f- Increment of the civic participation in the development of the Environmental Law,
- g- International Unification of the environmental penal types between the countries and inclusion of some crimes of environmental nature in to the list of Crimes of Hurt Humanity judgeship before the International Penal Court of Rome,
- h- Upgrade on strictly real bases of the developed countries as well as of the developing countries in front of the climatic change and other agreements,
- i- Installation of the technology of the information (regulation of advanced),
- j- Defense of the biodiversity,

Innovative visions of the environmental law to be submitted in Limoges (France)

The intend is to opt for an audacious optics to obtain the effective application of the pollutant.-payer principles, prevention, interdisciplinary and global as well as of the basic norms of the Environmental Law with the purpose of achieving: Environmental Law norms (in reason of the law that protects the great goods) that understands;

- a- The installation of the objective responsibility based on the generated fact and not in the agent's intention. Adoption of similar laws to the Law on petroleum contamination Petroleum of the United States of America (OPA for its initials in English), in its exploration phases, exploitation and transport, according to which the transporter responds and not the oil producer
- b- Alternatively, the establishment of the *culpa levissima* as regards to environmental responsibility in the other cases
- c- International Regulation of oil transportation
- d- The recognition of the right to a healthy Environment as a basic POLITICAL LAW and its recognition as an essential part of the human rights, DD.HH obligatory regional environmental juridical

- e- Adoption of strategic plans that include: protection of fresh water resource, coastal and marine ecosystems, forests, biological diversity, pollution control and prevention, production and consumption models, emergencies and environmental disasters, military activities and safety.
- f- The establishment of environmental procedures of special, privileged, effective and quick nature to process the reclamations before the Environmental Courts

International environmental tribunal and recognition of alternative organisms of solution of conflicts

The idea is supported behind presented years by the honorable Magistrate Amadeo Postiglione in the sense of creating a jurisdictional organism in charge of ruling in numerous events of legal and environmental nature and that said organism works with Regional courts and is dependent on the UN in the city of Rome.

It is suggested equally to diffuse the existence of the International Conciliation and Environmental Arbitration Court with headquarters in S. Sebastian, Spain, as a suitable alternate mechanism for solution of environmental conflicts.

Outlined additional points for the environmental law school of Colombia

- a- Legal and environmental regulation of the programs of substitution of illicit cultivations in the countries of the Andean region of South America
- b- Legislative Emphasis in the treatment of the relationship between health and environment.
- c- Establishment of the civic duty of environmental protection at a constitutional level in all the countries.
- d- Legislative development of the theory of the pact with the nature (natural Pact of MSerré)
- e- Establishment of jurisdictions specialized in the environment (Judges, Fiscal and Magistrates) in all the countries.
- f- Elaboration of integral studies of environmental impact on the side of the State for the grant of licenses and permits
- g- Consecration of the woman's environmental rights (right to the conception, upbringing and environmentally healthy feeding)
- h- Elaboration of regulations about environmental health and quality of life and its incidence in the human being
- i- Adoption of bio-safety norms, specially of transgenic products (Cartagena Protocol 1998)
- j- Upgrade of the Agenda 21 in all its aspects
- k- Amplification of the regulation about responsibility of the States for goods abroad and environmental damages

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- l- Promulgation of urban ecology norms and their harmonization with the national norms in each country
- m- Upgrade of the agreement of Basle, adopting a stricter regulation on production, transportation and distribution of toxic substances
- n- Promulgation of effective regulations on genetic manipulation, transplants and clones and equally on the existent one for genetic resources
- o- Establishment of prohibition of national and international fishing in high seas
- p- Adoption of zonification norms for the world marine exploitation
- q- Unification of legislations about international treatment of solid and liquids residuals
- r- Adoption of universal standards in such matters as protection of the environmental health, feeding, and about air, water and other pollutions.
- s- Establishment of direct and indirect taxes on energy products and fixation of internationally unified rates on the use of natural resources
- t- Active participation of the community in the proposal, elaboration and watch of the application of environmental norms.
- u- International Financing of environmental projects (Invigoration of the International Environmental Fund)
- v- Environmental Regulation of the International Trade that understands the expedition of certifications.

This document was worked by Miguel Patiño POSSE, professor of Environmental Law of the Rosario University, Bogotá, with the Environmentalist Lawyer's collaboration Juan Manuel Sabogal SABOGAL and the law student of the U. JAVERIANA, Silvia Patiño RODRÍGUEZ, and it picks up the initiatives exposed by the members of the Environmental Legal College of Lawyers Specialists in the different meetings that were held to such effect.

Integral College Doctors: *José Benigno PERILLA, President Miguel PATIÑO POSSE - Vice-president and Founding President, Carlos Ruiz PÁEZ - Fiscal, Gilberto Rincón, Treasurer, Juan Carlos ÁLVAREZ, Ricardo SÁNCHEZ and Hernando Sánchez SÁNCHEZ, spokeswoman, Martha Grau SALAZAR, Secretary, Gloria Isabel TRIVIÑO VALENZUELA, Germán Rojas GONZÁLEZ, Raúl PEÑA, Armando BOHÓRQUEZ, Rafael Vergara QUINTERO, Magistrate Contentious Tribunal Cundinamarca, Mauricio Jaramillo MARTÍNEZ (Senator of the Republic), Bernardo Sánchez HERRERA, Camilo CHAPARRO, Ricardo BOTERO, Eliseo CABRERA, Adriana RUBIO, María Helena ROBAYO.*

Members honorary Doctors: *Carlos Holguín HOLGUÍN (+), Marco Gerardo MONROY CABRA, Alegría Fonseca RAMÍREZ, Otto Morales BENÍTEZ, Antonio Barrera CARBONEL, Cesar Hoyos SALAZAR, Silvia Forero DE GUERRERO.*

Foreign correspondent members Doctors: Michel PRIEUR (France), Guillermo J CANO, Eduardo PIGRETTI (Argentina), Ramón Martín MATEO, Gabriel Real FERRER (Spain), Ramón Ojeda MESTRE (Mexico), Mateo

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MAGARIÑOS (Uruguay), Amadeo POSTIGLIONE (Italy), Rafael VALENZUELA (Chile)

II- SPECIFIC TOPICS

The fields (Desertification, pastorals activities, land), by H. BEDRAOGO and I. LY.

The most important legislative fact taken in the environmental legislation from 1992 in Colombia, it is constituted without a doubt by the promulgation of the law 99 of 1993. It is an organic law that structures in modern and functional form the environmental public sector for which SINA, or Environmental National System is created.

In first term the law establishes the foundations of the environmental politics of the country (Art. 1 General Principles) headed by the incorporation of the principle of the Sustainable Development in our juridical classification, concept defined in article 2 of the same law; in the same way it is welcomed the protection of the Biodiversity like National patrimony and of the humanity's interest and other series of principles with importance are adopted like the right of the human beings to a healthy and productive life in harmony with nature, legal protection of the areas of moors, sub-moors, origins of water and recharge of aquifer zones and others.

Environmental National System, SINA, is defined (Art. 4) as "A group of orientations, norms, activities, resources, programs and institutions that allow to start the environmental general principles". As for the functions of the ministry they are specified especially (Arts 2-9), those of formulating the environmental politics in the subject, to regulate the general conditions for the environmental reparation, and the use, handling, use, conservation, restoration and recovery of the renewable natural resources.

On the other hand is organized the environmental national council (Arts 13-22) maximum entity of environmental politics, integrated by several ministries associated with environment, for the intersector coordination to the politicians' public level and environmental plans (Arts 13-21).

As instrument of environmental administration and execution of political, Law 99 creates, or it reorganizes the regional autonomous corporations and corporations for the sustained development (CARS) (Arts 23-41).

Then is in charge of of fixing the recompensing and compensatory rates (Arts 42-48), rates to use water, the environmental percentage of the obligations to the property, the transfers of the electric sector, patrimony and rents of the Regional Autonomous corporations as economic instruments of environmental administration.

As for environmental licenses their competition and procedures these are developed in their general aspects in the articles 49-62 of the same law.

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Law doesn't forget to regulate such subjects equally as: work of the territorial entities and environmental planning (Arts. 63-68) civic participation and execution action (Arts 69-82) and sanction and police measures (Arts 83-86).

Finally the statute consecrates functions of environmental surveillance to entities like the General Attorney's office of the Nation in which establishes an Attorney's office delegated for Environmental Themes (Arts 97) and it already organizes the environmental national system pointed out in this report (Arts 102 and ss), environmental police (Arts 101) and it introduces the principle of the ecological function of the private property (Art. 107), as well as the establishment of a commission permanent reviewer of the environmental legislation (Art. 112).

Other significance laws taken place with posteriority at 1992, they have been the relating ones to the establishment of the ecological insurance, and it reforms to the penal code in the relative thing to the ecological crime (law 491, 1999), in which the rules are reformed that frame these behaviors; equally the expedition of relative rules to procedure to continue for the exercise of popular actions (Law 472, 1997), and execution actions (Law 393 of 1997), the regulation ordinance of protection and control of quality of the air (atmosphere, - ordinance 948 of 1995, transformed of ordinance 2107 of 1995 and 1697 of 1997), law 141 of 1994 in which is created the National Fund of bonuses and its National Commission to administer them "compensations" generated by the exploitation of renewable natural resources and their participation in the financing of environmental projects.

Finally, statutes 1791 of 1996 were sent, by means of which the regimen of forest use settles down, some politicians are defined, they adopt some classifications of such uses and their products, and it provides the relative thing to the use of products of wild flora and the control and surveillance of forest activity, statute 883 of 1997 by means of which the relative thing is regulated to the Environmental Licenses as administrative instrument of environmental control, including license, study of environmental impact and their evaluation, the statute 1753 of 1994 that it establishes the one process for the grant of environmental licenses and also the law 373 of 1997 by means of which settle down the program for the efficient use and saving of the drinkable water and statute 1320 of 1998 on regulation of the previous consultation with the indigenous communities and quarter notes for the exploitation of the natural resources inside their territories, statute 879 of 1998 on classification of the municipal and Distrital territory and the plans of Territorial classification, Law 430 of 1998 for which rules protectors are dictated in environmental subjects with respect to dangerous waste, Law 39 of 1997 on actions of Environmental Execution, statute 901 of 1997 on recompensing rates for direct use or insinuation of waters, statute 1743 of 1994 on projects of environmental education for all the levels of formal education.

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International trade, environment and Biodiversity, by P. A. MACHADO and S. BOURAOUI

It includes fields of desertification shepherding activities (cattle raising) and state and conservation of grounds.

About this subject is anticipated the next evolution:

An improvement of existent legislation as for optimization of the handling of grounds, implementation of a new agrarian reformation, respectful of ecological factor and inside the limits of sustainable development, and regulation but strict to control the impact of works of shepherding the bovine cattle and other on natural resources.

International Trade, environment and biodiversity.

Bigger regulation is expected it interns as coming from the trade organization OMC so that it is demanded in the commercial exchange the presentation of certifications it has more than enough execution of requirements and environmental norms in the process of elaboration products and this way to protect the environment from activity about International Trade.

In the relative thing to environment and Biodiversity, to be Colombia one of the countries but rich in this kind of resources, the correct application of Agreement Biodiversity is expected, as well as the subscription Protocol to that gives origin to this well-known agreement as Protocol of Bio-security proposed in Cartagena (Colombia) in 1999, even without ratifying.

The forests and their protection in a future international convention.

The points included in "Voluntary Declaration" of protection forests presented in the summit of Rio in 1992, they should be high to the category of obligatory international convention, especially regarding the protection to the tropical forest humid producing of oxygen, which Colombia even conserves big extensions in the regions as Amazonia, Pacifico coast, Uraba etc.

Those no beneficiaries and pact anti-poverty.

Aspiration is shared that Colombian State (in measure possibilities of a country in development), guarantee to all the citizens enjoy and the full enjoyment of right to health, dilutes drinkable, worthy housing and to consolidate the existent relationship between right to a healthy atmosphere (as a fundamental right), and as a part of the human rights (D.H.).

Democracy and access to justice of the environment.

In National level it is highly probable and desirable the rules are improved that regulate the environmental democratic participation, through

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the exercise of such public actions as: guides, fulfillment, of group, nullity, etc.

In the international thing it would be convenient to instrument a procedural way that enables the citizen of a country to work environmentally in quick shape, well be against a citizen or artificial person of the same country, or of another country, or even to another State different to the own one, when citizen is considered citizen harmed in environmental rights.

Legal Conditions integrated handling of environment.

Bigger harmonization internal legislation is expected, as much as central level of administration like regional and municipal level. Although the colombian code (Law) of protection of the RNR, and protection of environment it is a work of integrated artificial technique it is desirable to adopt coherent programs with the rest of the legislation, and especially with rules make effective the application in the environmental principles (enforcement).

Environmental Activities and Dangerous Substances.

It is not very numerous the legislation in this sense in our country. Colombia subscribed the agreement of Basilea and the text of the same one is part of internal legislation, according to that prepared in the Law 253 of 1996.

However it would be desirable the appearance of a new regulation law that makes effective the application of more legal controls as for activities and dangerous substances, in the relative thing to their production, storage, packing, distribution and transport.

Financing of environment.

So, in domestic environment as in regional and international it is expected that the principle “-Polluting - Payer” it is object of special Regulation so that obtained funds of their application pass to finance environmental works and likewise to avoid that payment for costs of decontamination is transferred this way by the pollutant to the consumer final altering the principle.

It is expected in the same way a bigger refinement and uniformity in factors used to define tariffs of the rates as much compensatory as recompensing that are charged by the use of renewable natural resources.

Equally those should be increased denominated “GREEN TAXES”, enlarging them to diverse ways of production of energy, to housing taxes in residential neighborhood for use environmental elements in the community (Example: GREEN OR WILD AREAS) to feed this way a “FUND” dedicated to construct of protection works for the most depressed and polluted urban areas.

Local Administration and environment.

An impulse is expected as much in administration and environmental legislation on part of the community in cities as rest of the country, being pointed out rules and procedures but precise and effective, as well as the design of entities more effective in charge of making them. If some companies of public services are privatized, it will be demanded the new owners the full execution of the environmental law.

Legal mechanisms control and pursuit of environment.

It is necessary to implement the legislation at the moment existent with effective measures of inspection, Control and Surveillance on industrial public and private activities that can contaminate. Likewise environmental licenses will be granted in form “conditioned” so that applicant commits to carry out to work of protection, and allow pursuit of their environmental obligations (handling Plan), and of being unfulfilled or absent, the same rule should allow a cancellation or lost immediate of the license or corresponding environmental permission.

NOTE: It is getting ready a document on reformation proposals and innovation to the Legislation Environmental World for the first decade of XXI century elaborated by the School of lawyers specialists in environmental law of Colombia, Bogota September, 2001.