

DIS-ORIENTING THE 2030 AGENDA: THE RIGHTS OF PLANET EARTH REVISITED

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Abstract. *In the fundamental shift towards a new conception of Earth, nature and environment, one of the main contributions of the document named “2030 Agenda” is the direct consecration of a juridical dimension devoted to Planet Earth. This juridical aspect is, in fact, one of its essential conceptual pillars, in addition to people and public-private partnership. The inclusion of Planet Earth within the main pillars of the 2030 Agenda is one of particular relevance, in that it inclusively abandons the vitiated consumerist pattern of present human habitats, by advocating for the need to adopt a sustainable type of global pattern. The holistic conception of human civilisation as an entity that cannot be separated from the Earth is a new paradigm which seeks to establish human lives in a harmonious, durable way with nature and planet. This emergent project is destined to improve not only the level of human rights protection, but also to enhance the level of nature protection and of the Earth itself, which is perceived as a home and as a uniquely fragile, but vital biosphere for human life. Preserving biodiversity, protecting green energy and saving urban agriculture in post-industrial societies constitute some key-components of the new, sustainable pattern which is actively promoted by the vision marking the 2030 Agenda. The present paper tries to look beyond the 2030 Agenda by proposing some special rights for the planet Earth which is regarded as a distinct subject of global law by the future judicial regimes.*

Keywords: *Planet Earth, 2030 Agenda, international environmental law, biosphere, consumption pattern, holistic conception.*

Towards a Consolidated Legal Framework for the Acknowledgement of “the Rights of Planet Earth” – beyond the 2030 Agenda

Even though mentioned in the key-document for the future of humanity, adopted under the aegis of the UN, i.e. in the 2030 Agenda¹, *for the time being and so far, planet Earth is not considered a distinct legal subject of international*

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¹ Resolution adopted by the UN General Assembly on 25 September 2015, 70/1, Transforming our world: the 2030 Agenda for Sustainable Development, UNGA, A/RES/70/1, <https://sustainabledevelopment.un.org/post2015/transformingourworld>, accessed at 28 September 2015.

environmental law. Thus, even though certain issues related to that have been discussed, we notice that *only states continue to be subjects of law, particularly in relation to planet Earth*, by assuming objectives, defining tasks and developing strategies to fulfil regarding the planet. As a result, *the legal responsibility at the international level in-between states and planet Earth also continues to belong exclusively to the state*. The 2030 Agenda document is *assumed by the states*, as main, sovereign and original subjects of international law. Hereto, we must note the second deficiency of The 2030 Agenda. It projects *global dimensions, some of which are very ambitious* (such as responsibility for the future of humanity and for planet Earth), which were created, however, *from the viewpoint of current international law* (which continues to be an *inter-state* one, by excellence, with no legislative authorities superior to the states recognized² and with no quality of subjects of law for planet Earth or for individuals).

In the document representing one of the sources of inspiration for The 2030 Agenda (i.e. in the synthesis report of the General Secretary on the post-2015 Agenda for durable development, with the title “*The road to dignity by 2030: ending poverty, transforming all lives, and protecting the planet*” – 2014), we notice that the “planet” represents one of the conceptual pillars on which this document is built. More precisely, a *special legal responsibility for the states* is introduced, i.e. the *responsibility to protect the planet* (translated in the document as “the protection of our ecosystems for all our societies and children”). It is *an inclusive and universal* dimension of the responsibility regarding the planet (it regards all the UN member states signing a post-2015 Agenda on durable development); it is also a legal dimension, *inter-state* by excellence (it does not refer to actors other than the states); it is also a dimension of responsibility in which *ecosystems are considered to be “national”*, i.e. entailing the rights and legal obligations *of the states*, as ecosystems on the territories of the respective states are treated legally as objects – therefore, seeing a continuation of the heritage-based liberal conception of nature, yet *with a tendency to moderate such concepts*, in the sense of raising awareness of the obligations to the environment, not only of the right to exploit it). The vision of this document, a precursor to Agenda 2030, is therefore a moderate-liberal one (it introduces the dimension of *responsibility of the states to protect the planet*), yet not a sufficiently ambitious one, to evolve towards the holistic approach (the human being as part of a living entity, on which he/she depends vitally and which he/she has the obligation to respect; the state as a legal subject, with nature, with planet Earth as new subjects of law, which the human being has the obligation to treat with respect).

According to the abovementioned document, this responsibility to protect the planet stems from *highlighting a series of Sustainable Development Goals*, proposed by an open work group of the General Assembly, which represents the

² Raluca Miga-Besteliu, *Drept internațional. Introducere în dreptul internațional public*, All-B Publishing House, Bucharest, 1998, pp. 4-7.

working grounds for the post-2015 intergovernmental process, according to the UN GA resolution. These Sustainable Development Goals include *the ones referring directly to the quality of the states' responsibility for the protection of the planet or the concept of "planetary sustainability"*. The goals seek to make the cities sustainable; to change consumption and production patterns and to adopt urgent measures to counter the climate changes and their effects. They also target preserving and using the oceans, seas and marine resources in a viable manner for the sake of sustainable development. Equally important, they aim at protecting, restoring, promoting the sustainable use of terrestrial ecosystems by creating a sustainable management of the forests, countering desertification and preventing as well as reversing the soil degradation process. Hence, they end up bringing to a standstill the loss of biodiversity, through strengthening the measures to implement and revitalize the global partnership for sustainable development³.

The concrete presentation of these Goals regarding the legal content of the responsibility of states under the aegis of the UN, as far as the planet is concerned, *clearly shows the predominant legal role of the states and international organizations involved* in this process of shaping this special responsibility (the UN, through its bodies). Therefore, they positively interact within the perspective of a *dynamic, active role, as subjects of international law*. However, *the expected change in legal perception regarding planet Earth is not recorded*. Thus, neither the abovementioned document nor the 2030 Agenda state that planet Earth or nature would be attributed the legal quality of "subjects of law", distinct from their affiliations with the states and, as a consequence, they would put the States and non-state actors such as transnational companies on equal footing as equitable partners.

Neither in the field of public law, nor in the field of private law (as subject of law in the national order of a state) is the "environment" acknowledged yet as *distinct legal entity*. Therefore, there is no possibility to *defend and legally represent* nature, the environment or planet Earth, at national, regional (in the European law, for example) or international level (where the representatives of the rights of planet Earth, as subject of international law, *distinct* in relation to the states, maintain a position legally equal to that of the states, both in the UN Security Council and in all the specialized UN bodies).

In our opinion, this defective situation *represents the first major deficiency of the 2030 Agenda*, which gives a privileged position to the States which are made responsible to *protect* the planet, *without fundamentally exceeding the heritage-based concept specific to the 20th century*, in which nature, planet Earth, the terrestrial ecosystems are regarded *as objects* to be used by their owner, who has even the right to pollute them, exploit them without limits, and even destroy them.

³ UNGA, A/69/700, 4 December 2014, *The road to dignity by 2030: ending poverty, transforming all lives and protecting the planet*, Synthesis Report of the Secretary-General on the post-2015 sustainable development agenda.

*Towards a “global partnership”/“global solidarity”
for sustainable development*

Introducing the responsibility to protect the planet is an obligation *assumed by the states, through these documents, under the aegis of the UN, which continues, however, to enable transnational companies, which are, in fact, the main polluters and exploiters of nature as long as they are founded on the consumerist and profit-based model. This orthodox model continues to regard the planet as a gigantic market for their services and products, without acting similarly to states and assuming global responsibility for the protection of this planet. Therefore, this is the second major flaw (lack of a Global Charter of Obligations of the transnational Companies, regarding the planetary sustainability) and the 2030 Agenda leaves the planet and nature at the hand of non-state actors such as transnational companies, which continue to be actors unacknowledged in international law (as inter-state law), that is to say, actors that do not assume obligations concerning the model of durable development. Indeed, they do not act as the states do at the legal level (though some of them have turnovers higher than the GDP of certain states)⁴.*

We consider that this last deficiency can be corrected by using another mechanism introduced by the *Road to dignity* document, and taken over in the 2030 Agenda, respectively through a *global partnership/global solidarity for sustainable development*. This is the sector which can see into the construction of special responsibilities for non-state actors, such as transnational companies, in the relationship with the states (on which territories, the activities developed should not degrade, have an impact on the quality of the environment and ecosystems,) both regionally and globally.

At the beginning of the 21st century, *the international law itself* must be able to open to this challenge (through the *global dimension of the responsibility to protect the planet, introduced by the 2030 Agenda*). The tangible sub-domains in which this special responsibility can be created entail *concrete obligations from transnational companies before the planet as such* (with the quality of subject of law) *and before the states where they develop their activities* (including the ecosystems on the territories of the respective states receiving the quality of “subject to internal law”, quality which enables them to *self-protect*, through their special representatives at national level, against the destructive exploitation actions of the states, transnational companies or other agents).

The change of the international law, in the sense of *creating a global legal dimension* (with *subjects of global law, with institutions and mechanisms, with global rules and regulations regarding a concrete set of global issues, including the quality of the environment, the protection of planet Earth and of the terrestrial ecosystems, concretely*), represents, in fact, *a true challenge that the*

⁴ Ion Diaconu, *Tratat de drept internațional public*, vol. I, Lumina Lex Publishing House, Bucharest, 2002, pp. 502-503.

2030 Agenda has not approached yet, but which needs to be solved in future decades, if a realistic implementation of the global sustainable development is desired.

The concept of “global solidarity” (or global partnership) represents an innovative dimension, which introduces other actors *in* the legal obligation assumed by the states – the special responsibility to protect planet Earth – including the international civil society, and the NGOs with transnational activity. They are capable of participating with visions, suggestions and actions to *increasing the responsibility of the states to nature and the planet. They can push the States to create a concrete dimension of the obligation to act according to the model of sustainable development in all their policies and to protect the planet, which can be a desired effect of a global contribution.*

Conclusions

In the future, *the fundamental transformation of the state-nature relationship* is required, in the sense of *acknowledging the quality of subject of law for nature and planet Earth*. Thus, we can contribute to the *creation of global institutions for the protection of nature and planet Earth*, in the sense of representing them and holding liable the entities infringing upon the rights of nature and planet Earth. It is not sufficient to build a “*global solidarity*”, for the universal application of the model of sustainable development, in which the environment *remains an object* which is subject to the action of human beings, will not be able to defend nature or contest human beings’ destructive actions.

Therefore, the limits of the 2030 Agenda are visible and, in the future, it is necessary to create a *global dimension* (with subjects of global law, global institutions, special global legal frameworks) *of the current global international law*, which has reached its limits in terms of the capacity to manage certain global issues and especially in the human being-planet, human being-nature, state-planet or state-nature relationships. For the time being, these relations suffer from a *legal imbalance* favouring the property right of the human being/state over nature, even though documents such as the 2030 Agenda show a tendency of moderation for excessive liberalism which dates back to the 19th century. *Even if the 2030 Agenda proposes to place the human being and his/her planet at its centre* (building a binomial of life, human being-planet, an organic, living, inter-depending whole, in fragile balance), *the legal relation has not been determined, in the sense of granting nature and the planet Earth the quality of subject of law*, similar to that of the human being (in internal and international law) and of the state (at an internal and international level). The implementation of *complex human beings-public-private partnership*, at all levels, with the participation of all the relevant actors, is an extremely ambitious goal of the 2030 Agenda. However, this global partnership at all levels *is not meant to build the holistic vision, in which planet Earth and nature are granted the quality of subjects of the law*. Instead, it is limited to implementing the responsibility of states to protect nature and the planet, i.e. it *remains stuck in the heritage-based*

conception, which excludes planet Earth and nature from the decision-making level emanating from this global partnership. This global partnership integrates all types of actors, in order to provide the states *with a real possibility of implementing the goals of sustainable development* in their internal, regional and international order. However, this does not mean that there is a great change in legal mentality, in terms of positioning the human being in relation to nature and the planet Earth.

However, *we must also note certain innovative tendencies*, heading in the abovementioned direction: thus, certain documents adopted under the aegis of the UN (UN GA Resolution dated July 27th 2012, A/RES/66/288, under the name “The Future We Want”) expressly define an acknowledgement of the phrase “*mother Earth*”, in various countries, as an expression of acknowledgement that the planet Earth and its ecosystems are more than mere objects or environments of the proprietary-human being, with the right to unlimited, abusive, unconditional capitalization and even destruction (wars included), according to his/her wish. Instead, they represent *the home of humanity*. Moreover, paragraph 39 of the document shows that *certain countries already acknowledge “the rights of nature”, in the context of promoting sustainable development*. Promoting a “*balanced relation with nature*” becomes an objective assumed by the states through this document. *The opening towards holistic and integrative conception proposed by the sustainable development*, together with the effort assumed by the states “to restore the health and integrity of the Earth’s ecosystems” are highlighted in paragraph 40 of the above-mentioned document.

Therefore, these two paragraphs represent *the beginning* of an important conceptual and legal action, within the UN system, *marking an evolution towards a new type of legal approach* (a holistic, integrative approach, based on the concept of sustainable development). By doing so, they already acknowledge the fact that certain countries no longer discuss the right *to a clean environment*, that is to say, they do not act towards a distinct legal category of post-heritage-based rights, the so-called “*rights of the nature*”.

The goals of sustainable development in the above-mentioned documents were included in the 2030 Agenda, *without a substantial transformation* added by the latter. In principle, it maintained the heritage-based conception regarding the legal relationship between the human being and nature, the human being and planet Earth, the state and nature, the state and planet Earth, moderating to a certain extent the liberal, consumerist approach to this conception which dates back to the 19th century. However, the important fact is that certain documents adopted in the UN system include *direct references to the change in the legal paradigm* (from the heritage-based conception of nature and planet Earth, to the holistic view, according to which, nature and planet Earth are acknowledged personality and specific rights, on equal terms with states and individuals), which, in our opinion, is a true change in the legal mentality regarding this subject.

To *remedy* the legal balance in the human being-nature relationship, attorneys have proposed *overcoming the passive function of “object of law” of the environment and creating a new legal relationship between the human being and nature*,

based on human responsibility towards the future generations (and towards their rights to a healthy, clean environment, which can be passed down to future generations.) It is also based on transforming nature into a *subject of law*, in order to ensure *an adequate legal protection* at a transnational level, where the *goods belong to no one* (land without certain owner). Thus, it was proposed to grant “nature” *specific rights*, besides the quality of *subject of law*, not only for nature in itself, but also for *elements* of nature (trees, climate, ozone, habitat, animals)⁵, for the latter to defend their interests in court, through their *special representatives to empower* a position of equality with the rights and interests of the human being. It is *a revolutionary conception regarding the relationship between the human being and nature, meant to increase the responsibility of the human being* in relation to the terrestrial ecosystem and each of its components. The human being is a living being, *who fundamentally depends on* the quality of environment and who is *in an integrated part* of the terrestrial ecosystem.

The *holistic conception (the human being as part of a living whole)* is more adequate for developing a responsible legal perspective of the human being towards nature and towards the planet he/she inhabits. To this end, *the right to environment*⁶ was regarded as a legal counterweight for the *sacred right to property*, with the former being a right not *over* the environment, but a right to *an enhanced quality* of the environment. This conception entails the dimension of *actual legal protection and the aspect of legal responsibility* (for damages caused to the environment such as pollution, degradation and irreversible destruction, as well as the obligation to pass down to future generations a healthy and clean environment)⁷.

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⁵ *Ibidem*, p. 33.

⁶ *Ibidem*, p. 37.

⁷ Daniela Marinescu, *Tratat de dreptul mediului*, 4th edition, Universul Juridic Publishing House, Bucharest, 2010, pp. 13-14.

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