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RIGHTS OF PLANET EARTH: BEYOND THE 2030 AGENDA

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RIGHTS OF PLANET EARTH: BEYOND THE 2030 AGENDA

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Abstract:

One of the main contributions of the document named "2030 Agenda" at the fundamental shift towards a new conception about Earth, nature, environment is the direct consecration of a juridical dimension devoted to Planet Earth, as one of its essential conceptual pillars (among others as people, public-private partnership). The inclusion of Planet Earth within the main pillars of 2030 Agenda is one of particular relevance, inclusively for abandoning the vitiated consumist pattern of present human habitats and for the need to adopt a sustainable type of global pattern. Holistic conception about human civilisation as not being separated from the Earth but living in a harmonious, durable way with nature and planet is a new type of multi-dimensional paradigm, destined to improve not only the level of human rights protection but also, the level of nature protection and of Earth itself, perceived as a home and as an unique, fragile biosphere, vital for the human life. Preservation of biodiversity, green energy, post-industrial societies, urban agriculture are some key-components of the new, sustainable pattern, promoted actively by the visionary 2030 Agenda. The present paper tries to look further than 2030 Agenda, by proposing some special rights for the planet Earth regarded as distinct subject of global law, from the perspective of the future legal regimes.

Keywords:

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

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1. 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 Agenda[2], *for the time being, planet Earth is not considered a distinct legal subject, of international environmental law*. Thus, even though certain related have been stated, we note that *only the states continue to be subjects of law, in relation to planet Earth*, assuming objectives, tasks, strategies to fulfil regarding the planet. As a result, *the legal responsibility* at international level, in the relation between the states and planet Earth *also continues to belong exclusively to the state*, with the document Agenda 2030 being *assumed by the states*, as main, sovereign and original subjects of international law. Hereto, we must note the second deficiency of The 2030 Agenda: the fact that it projects *global dimensions, some very ambitious* (such as responsibility for the future of humanity and for planet Earth), created however *from the viewpoint of the current international law* (which continues to be an *inter-state* one, by excellence, with no legislative authorities superior to the states recognized[3] and with no quality of subjects of law for the planet Earth or for the 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 note 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 *the ecosystems are considered to be "national"*, i.e. entailing the rights and legal obligations *of the states,* as the ecosystems on the territories of the respective states are treated legally as objects – therefore, seeing a

[2] Resolution adopted by the UN General Assembly on 25 September 2015, 70/1, Transforming our world: the 2030 Agenda for Sustainable Deveopment, UNGA, A/RES/70/1, https://sustainabledevelopment.un.org/post2015/transformingourworld , accesat la data de 28 sept. 2015.

[3] Raluca Miga- Beşteliu, *Drept internațional. Introducere în dreptul internațional public*, All-B Publishing House, Bucharest, 1998, pp.4-7.

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continuation of the heritage-based liberal conception of nature, yet *with a tendency to moderate such conception*, 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 2040 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 above-mentioned 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 *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"*: making the cities sustainable; changing the consumption and production patterns; adopting urgent measures to counter the climate changes and their effects; preserving and using the oceans, seas and marine resources in a sustainable manner, for sustainable development[4]; protecting, restoring, promoting the sustainable use of terrestrial ecosystems; creating a sustainable management of the forests; countering desertification; stopping and reversing the soil degradation process; stopping the loss of biodiversity; strengthening the measures to implement and revitalize the global partnership for sustainable development[5].

The presentation of these Goals *concretely* regarding the legal content of the responsibility of the states under the aegis of the UN, regarding the planet, *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 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 above-mentioned document, nor the 2030 Agenda states that planet Earth or the nature would be attributed the legal quality of "subjects of law", distinct in relation with the states and, as a consequence,

[4] See also, Marie-Claude Smouts, Dario Battistella, Pascal Vennesson*, Dictionnaire des relations internationales*, Dalloz, Paris, 2006, pp. 201-202.

[5]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.

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that they would be in a position of legal equality in relation to the states or non-state actors (transnational companies).

2. Present gaps in the legal international regime of protecting Earth and environment and some proposals regarding consolidation of the biosphere global protection

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*[6]. 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 a first major deficiency of the 2030 Agenda*, which is only limited to define the responsibility of the states *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, destroy them.

Introducing the responsibility to protect the planet is an obligation *assumed by the states, through these documents, under the aegis of the UN, continuing however to enable the transnational companies,* the main polluters and exploiters of nature, through the consumerist and profit-based model, which continue to regard the planet as a gigantic market for their services and products, without acting similarly to the 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), therefore actors that *do not assume obligations* concerning the model of durable development, *at the same legal level as the states* (though some of them have turnovers higher than the GDP of certain states)[7].

[6] Mircea Duțu, Andrei Duțu, *Dreptul de proprietate și exigențele protecției mediului*, Ed. Universul Juridic, București, 2011, pp. 33, 22-23, 174-178.

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

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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 *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*.

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, dating 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, the nature and planet Earth are acknowledged the personality and specific rights, on equal terms with the states and individuals), which, in our opinion, is a true change in the legal mentality regarding this subject.

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 the nature and planet Earth*, thus contributing 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 the human being, without being able to defend itself or contest his/her 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 relationship. 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 of excessive liberalism, dating 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,

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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 the internal and international law) and of the state (at internal and international level). The implementation of the *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 the nature are granted the quality of subjects of the law*; instead, it is limited to implementing the responsibility of the states to protect the nature and planet, i.e. it *remains stuck in the heritage-based conception*, which excludes planet Earth and the nature from the decision-making level born from this global partnership. The global partnership integrates all the 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 the 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, while *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 the evolution towards a new type of legal approach* (a holistic, integrative approach, based on the concept of sustainable development), already acknowledging the fact that certain countries no longer discuss the right *to a* clean environment, but a distinct legal category of post-heritage-based rights, the so-called "*rights of the nature*".

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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 2030Agenda).* The concrete sub-domains in which this special responsibility can be created entail *concrete obligations from the 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)[8], represents in fact *a true challenge that the 2030 Agenda has not approached yet*, but which *needs to be solved in the 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, 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,* for the former to be able 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*, as an effect of a global contribution.

Some Conclusions

To remedy the legal balance in the human being-nature relationship, the 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 the human responsibility towards the future generations (and towards their rights to a healthy, clean environment, which can be passed down to future generations), as well as one based on transforming nature into a subject of law, in order to ensure an adequate legal protection, at transnational level, but also related to the goods belonging to no one(land without certain owner). Thus, it was proposed to

[8] See also, David Held, Anthony MvGrew, FAvid Golblatt, Jonathan Perraton, *Transformări globale. Politică, economie şi cultură*, trad. de Ramona-Elena Lupaşcu, Adriana Ştraub, Mihaela Bordea, Alina-Maria Turcu, Polirom, 2004, pp. 97-98.

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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)[9], for the latter to defend their interests in court, through their special representatives, from 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 in an integrated part of the terrestrial ecosystem.

The holistic conception (the human being as part of a living whole) is more adequate to develop a responsible legal perspective of the human being towards nature and towards the planet he/she inhabits. To this end, the right to environment[10]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, which entails the dimension of actual legal protection and the dimension of legal responsibility (for damages caused to the environment, for pollution, degradation, irreversible destruction, as well as the obligation to pass down to future generations a healthy and clean environment)[11].

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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 on September 28th 2015

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[4] UNGA, A/69/700, December 4th 2014, *The road to dignity by 2030: ending poverty, transforming all lives and protecting the planet,* Synthesis Report

[9] Ion Diaconu, *Tratat...,* op. cit., p. 33.

[10] Idem, p. 37.

[11] Daniela Marinescu, *Tratat de dreptul mediului*, ed. aIV-a, Universul Juridic Publishing House, Bucharest, 2010, pp. 13-14.

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