

Communion and Law International Congress 13-15 November 2015

CALL FOR PAPERS

The points below describe the themes that have emerged from preparatory sessions for this conference, including an international seminar held in March 2014 at Castelgandolfo (Rome) and a summer school in Abrigada (Portugal) in July 2014. Indications for submitting a paper proposal follow.

1. Environmental law and environmental protection: In an objective sense, discussions thus far have considered the area of law regarding the relationship between living beings and natural resources, and in particular the regulation of human activity that has an impact on the natural environment.^[1] At the broadest level, one aim of environmental law is to protect and promote the optimal conditions of the natural *habitat* in which human beings are called to live now and in the future, so as to protect the life of humans and other living beings.^[2] Because there is a close relationship between protection of the person and protection of the environment, one may speak of a human right to a healthy environment.

In a subjective sense, environmental law may be considered from three perspectives: first, as guaranteeing the personal right to enjoy a healthy environment; second, as protecting the rights of a community living in a particular territory; and third, as protecting the rights of future generations, and the extent to which these concerns should influence and condition how environmental resources are currently managed and used.

2. The relational quality of environmental law. Environmental law is characterized by a strong relational quality, embracing three dimensions: with the natural environment, with other living beings, and with future generations.

This quality also permeates relationships between both public and private subjects with varying interests and roles in environmental protection. These include private economic actors in the regulation of their use of natural resources, the varying public and private entities that work for environmental protection a healthy environment, as well as the public entities legally responsible for environmental protection.

3. Principles of environmental law.

Among these general principles, one focus of previous discussions has been the concept of **sustainable development**. Development is considered sustainable when it satisfies the needs of present generations without compromising by means of an indiscriminate use of the available natural resources the needs of future generations. Tightly linked with the concept of sustainable development is also the **principle of intergenerational solidarity**, understood as the duty to use natural resources in a way that considers the needs of future generations. Also related to this topic is the **“the polluter pays” principle**, which imputes legal and financial responsibility to the one who

caused environmental damage, and therefore payment of damages to those who have been harmed.

Regarding reparation of damage, one might also observe that while the principle of “the polluter pays” operates *ex post*, it is also true that regarding an already determined course of action, the **principles of precaution and prevention** are directed toward avoiding *ex ante* that which has been determined to constitute irreversible damage. In fact, the **principle of prevention** consists in the adoption of the preventative measures necessary for impeding the realization of an activity potentially damaging for the environment in the face of potential damage. The **principle of precaution**, on the other hand, indicates the duty to act in order to avoid potential damage, even when there is not scientific certainty that a determined activity could be potentially dangerous. These principles may be applied to various areas that regard protection of human life and safety, for example, regulations for the protection of workers and consumers, and especially in light of the impact of new technologies.

4. The public nature of environmental protection and the right to participation. Generally, protection of the environment, the landscape, and of natural and historical resources is entrusted to public authorities. But other subjects also have a legitimate interest in protecting the environment. For example, affected communities and recognized associations are also empowered to intervene in administrative proceedings relating to permits, authorizations and exceptions for land use and the use of natural resources. For these reasons, these subjects also have a right to access public information regarding the environment. In accordance with the Aarhus Convention of 1998, international law guarantees the right of access to information and the right to public participation in the decision making processes and proceedings as part of the right of every person, of both present and future generations, to live in an environment that protects both health and well-being.

5. Protection of the environment within a city or territory. Along similar lines, individual citizens also have the right and the duty take interest in and participate actively in the care of the environment. For this reason, they are also guaranteed access to and use of information regarding environmental matters, as well as active participation in decisions regarding the environment. While this participation is generally linked with residence in a particular city or territory where every citizen can play a role in monitoring and influencing decisions regarding care for the environment, today’s challenges invite citizens to also look to broader horizons. Advocacy to foster the protection of health may include concern for the preservation and protection of water resources, and attention to food safety, which is often linked to attention to toxic waste and dumping. It may also include attention to the changing nature of urban life, a privileged space for active citizenship. For example, increasing demands for personal safety pose the risk that urban environments become marred by fences and gates, signs of mistrust and conflict, interfering with the potential for a city environment to be a place to meet and develop social relationships.

6. Environmental protection and responsibility. From the principles developed within the framework of environmental law, and also in light of recent challenges, what seems to emerge is a new concept of legal responsibility, which, at its foundation would encourage a greater awareness of the possible consequences of one’s actions, new regulatory models, and new rights and duties of citizenship.^[3]

Moving beyond an understanding of legal obligations as a burden, a merely perfunctory respect for rules, and mere avoidance of harm, this new vision suggests a more complex idea of responsibility, one that may include the effort to anticipate the consequences of one’s actions, an

appreciation for the opportunity to consult with others who are concerned, the capacity to change one's own plans in light of possible negative consequences, and the desire to give a transparent account of the impact of one's actions.^[4]

In this context, the idea of responsibility changes from a concept focused merely on commission of an offense (legal liability) toward broader concerns regarding prevention and precaution. While not excluding the previous considerations, it also "opens out toward a new dimension: relationships."^[6]

In this sense, discussions regarding legal responsibility turn their focus to responsible care for the other, whether another person, community, or the natural environment, and so on. One becomes responsible for harm caused because one is primarily responsible for others.^[7] This opens one's perspective to the relationship of brotherhood, and one might also speak of responsibility to take care of the other, also by caring for the environment.

7. Corporate Responsibility. Another consequence of this perspective is a new vision of corporate responsibility in which business activities would no longer be oriented by a simple logic of the market or an exclusive focus on profit, but also by respect for the values of transparency, cooperation, reciprocity, and respect for the land and the natural environment. For instance some States (for example, in the European Union) have introduced criminal corporate responsibility for environmental offences that devolves on the directors and management and cannot be barred by the limited liability of a company.

8. Environmental protection and legality. Against this backdrop it also becomes possible to interpret the full value and meaning of **the rule of law**, as an exercise of rights and duties in accord with the norms enacted for the protection of others (persons, communities and the environment), and for the common good.

[1] DELISE E., *I diritti umani e l'Ambiente, una panoramica generale*, AmbienteDiritto.it, disponibile in rete a http://www.ambientediritto.it/dottrina/Dottrina_2010/diritti_umani_delise.htm

[2] *Ibidem*

[3] FODDAI M.A., *Responsabilità e soggettività*, in (a cura di) S. Rodotà e M. T. Tallacchini, *Ambito e fonti del biodiritto*, Trattato di biodiritto, dir. da S. Rodotà. P. Zatti, Milano, 2010, pag. 404, 431

[4] Davis W., *The Dimensions and Dilemmas of a Modern Virtue*, Introduction to Id. (ed.), *Taking Responsibility*, Charlottesville –London, University Press of Virginia, 2001

[6] COSSEDDU A., *La dignità umana tra relazione e responsabilità*, in *Nuova Umanità*, 2012, 245.

[7] RICOEUR P., *Il concetto di responsabilità. Saggio di analisi semantica*, in *Il Giusto*, SEI, Torino 1998 (Tit. orig. *Le Juste, Esprit*, 1995); COSSEDDU A., op. cit., 245.

INDICATIONS FOR A SUBMISSION TO THE 2015 INTERNATIONAL CONGRESS:

Those wishing to propose a paper to present at the conference are kindly requested to submit a one-page abstract by 10 July 2015 to the email address: info@comunionediritto.org. Abstracts and texts may be in Italian, English, Spanish, Portuguese, or French. More information about the conference and registration for the event may be found at www.comunionediritto.org.

The Scientific Committee will make selections, and communicate its decisions by September 5, 2015. Presenters are requested to submit the full text of presentations no later than October 15, 2015, to allow enough time for translations. Selected papers will be presented orally during the International Congress.