

## RELAȚII INTERNAȚIONALE ȘI STUDII EUROPENE

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### New legal Concepts in the XXI<sup>st</sup> Century Global Society: from “Global Good Governance” to “Global Eco-diplomacy”<sup>1</sup>

Mădălina Virginia ANTONESCU

**Abstract:** *In the present paper, we'll try to analyze briefly some of the concepts commonly used in the domain of international relations, connected to the field of human rights and we'll attempt to show their connection to other areas as human security, human development and sustainable development. After briefly analyzing the content of concepts such as global governance, good governance, we'll reveal their relation to the concept of environmental security, due to the reality that, for the XXI<sup>st</sup> century global world, the protection and preservation of the Earth environment will represent one of the fundamental obligations of the political actors. This ethical (the ethical element representing, within the global society of XXI<sup>st</sup> century, one of the most important instruments of the global post-capitalist policy) and legal obligation (consolidating an authentic global environmental law, significantly enriched from the sanction-implementation viewpoint, as compared to the current set of international environmental regulations law, deeply enriched at compulsory level, in comparison with the present legal body of environmental law) will be implemented not only regarding state actors but also, non-state actors which cannot be neglected anymore in the XXI<sup>st</sup> century global society. We'll also analyze other juridical concepts as eco-development, sustainable development, with some short observations regarding a global environmental law. The third section will present some considerations over the perspective of introducing “the rights of the nature”, within the XXI<sup>st</sup> century international law, where environment would be a distinct subject of international law, nearby states and international organizations, enjoying a special range of distinct rights. The fourth section focuses on the perspectives of eco-diplomacy and its legal nature (an inclusive type of diplomacy, based on the harmonious relation between the human being and nature or, on a contrary, dichotomic diplomacy, based on an antagonist relation between the human being and the environment).*

**Keywords:** *global good governance, global eco-diplomacy, global society, eco-development, sustainable development*

### **The Concept of “Global Governance” and its Connection to the Concept of “Good Governance”**

Dating back to the Cold War, the term “*global governance*” was initially associated with Willy Brandt, referring to the North-South relation, to the human rights and sustainable development. On the initiative of Willy Brandt, the Commission on Global Governance/1995 was created; its report presented the concept of a world governing, which is based on the premise of a complex relationship, not only among governments, but also among the private actors (NGOs, citizen movements, multinational corporations, media and the world market – regarded here as an actor *per se*)<sup>2</sup>.

The Commission proposed a quite flexible definition of “*global governance*”, taking into account the composite nature of the XXI<sup>st</sup> century world: “the sum of the many ways individuals and institutions, public and private, manage their common affairs. It is a continuing process through which conflicting or diverse interests may be accommodated and co-operative action may be taken. It includes formal institutions and regimes empowered to enforce compliance, as well as informal arrangements that people and institutions

either have agreed to or perceive to be in their interest”<sup>3</sup>.

The concept of “*global governance*”, widely used in international relations, especially in the recent doctrine, is designed to explain a model of the global world as a world of complex interdependencies, being regarded as a phrase that meets the need to implement certain international regimes and certain methods of managing the global affairs characterizing the world, at the beginning of the XXI<sup>st</sup> century<sup>4</sup>. The UN system reform, the humanitarian intervention, the UN involvement in disseminating the democratic values at global level (e.g. UN monitoring the election procedures in Namibia/1989, Angola/1992, Cambodia/1993, the former Soviet republics/1995) are some of the aspects related to the term “*global governance*”. The doctrine also quotes the creation in 1992 of an Election Assistance Division within the UN Department for the Peace Maintaining Operations, thus establishing the grounds for a global election assistance process (under the aegis of the UN), which brings the phrase “*global governance*” closer to the phrase “*good governance*”<sup>5</sup>.

Global governance is also connected to the forming of a global financial market, to the cross-border activity of multinational corporations, to the globalization of the production of goods and services, to the

development and global enhancement of communications, as well as to the *occurrence of certain global legal and ethical regimes*: ecopolitics, human rights, globalization of certain ideologies after the end of the Cold War (globalization of liberalism, of capitalism, of democracies)<sup>6</sup>. A part of the globalist doctrine denounced what it perceived as ‘a phenomenon of monopolization of the globalization concept, by the advanced and industrialized countries in the rich North’, which also established the content of an agenda qualified as “global”, depending on the interests and their specific perception of globalization (through certain organizations such as OECD or exclusivist forums such as G7/G8)<sup>7</sup>.

The concept of “global governance” is rather difficult to define using traditional paradigms (realist, neorealist), in the international relations, because it concerns the challenge to govern a XXI<sup>st</sup> century world without governs, the challenge to build a new type of political and public legitimacy, without representative democracy, as well as the challenge to solve conflicts without the use of hegemony<sup>8</sup>. As an innovative concept, global governance attaches particularly to innovative phrases in the international relations, such as: transnational social movements, cosmopolitan democracy and world public opinion<sup>9</sup>.

The challenge of the “global governance” concept is even greater, if we consider the *composite nature of the global society, at the beginning*

*of the XXI<sup>st</sup> century*, characterized by intense processes of regional integration, by a multitude of public and private actors, by identifying certain global issues and affairs (global warming, international terrorism, environment risks, global health risks, North-South divide etc.)<sup>10</sup>. Its main challenge is *to identify methods of global management* of these affairs and global issues, through adequate institutional bodies, in other words *to create global legal and institutional regimes, including the field of nature’s rights* (from which an *authentic global environmental law and global eco-politics* would develop, starting from the current set of international legal regulations concerning the environment).

In our opinion, another concept related to “global governance” is the concept of “*good governance*”, which in turn is related to the complex phrase “environmental security” and to the phrase “*global environmental ethics*”.

The concept of “governing” or “governance” originates in the phrase “corporate governing/governance”, used in the late ‘70s, when its purpose was to find the balance between the “interests of the company shareholders and of the other company-related parties, overall (employees, local groups, subcontractors etc.)”<sup>11</sup>. In the late ‘80s, “good governance” becomes a phrase deriving from the corporate governing, implemented at international level at this point, with reference to the financial and political relations of a state with the

international financial bodies (such as the World Bank, the International Monetary Fund, subsequently used by the EU as well, by other international creditors, regional development banks etc.). Thus, the phrase became a criterion for the assessment of a state requesting international financial aid, which the doctrine considers to be synonymous with “good public administration”<sup>12</sup>.

Connecting the concept of “good governance” to the global level and the environmental security, we can emphasize a clear obligation to ensure the preservation and maintenance of the environment and of the terrestrial ecosystem, in the global society of the XXI<sup>st</sup> century, both for the states and for the global institutions (a reformed UN, included), through the national policies (in the case of states), through the local policies (in case of local groups, the autonomous infra-national administration level), through the regional policies (states, within international organizations of regional cooperation, but also supra-state entities, such as the EU), as well as through the international policies (states, multilateral instruments of cooperation at international level).

*This ethical* (in the global society of the XXI<sup>st</sup> century, the ethical element represents one of the most important instruments of the post-capitalist global policy<sup>13</sup>) and *legal obligation* (by consolidating an *authentic global environmental law*, significantly enriched from the sanction-implementation viewpoint,

as compared to the current set of international environmental regulations) occurs not only for the state actors, but also for the non-state actors, which cannot be ignored in the global society of the XXI<sup>st</sup> century<sup>14</sup>. This global society in process of formation and consolidation, at the beginning of the XXI<sup>st</sup> century, is a composite one, in which *the role of the non-state actors becomes highly important, including the issue of ensuring the correct and exact responsibilities regarding the protection and preservation of the environment.*

The model that is severely harmful for the environmental health and protection, based on the capitalist or consumption society, organized on the ideology of robbing, irrational and unlimited exploitation of nature<sup>15</sup>, will be replaced under the pressure of increasingly pressuring the state and non-state actors to become responsible, with the aid of the *ethical and environmental model* of political governance and commercial action at all levels. From this perspective, “good global governance” will mean the accurate fulfilment of *a new global set of mandatory rules and regulations, regarding the environmental protection, for the benefit of future generations*, by the state actors (the role of a state actor in the XXI<sup>st</sup> century is different and encompasses more responsibilities towards nature, as compared to the classic role of the westphalian state until the present) *and by the non-state actors.*

## **”Eco-development” and “Sustainable Development” in the Global Society**

The new set of global environmental regulations to be developed in the XXI<sup>st</sup> century, based on *the ecologist and ethical model of global society* (post-consumerism, society recycling waste products, redoing the degraded environment and preventing the environmental pollution<sup>16</sup>) originates in a *set of already existing documents* (book, conventions, declarations of the states, which do not include *the non-state actors* such as national and transnational corporations, global mass media, transnational religious cults – such as the Catholic Church, the Orthodox Church, the Islam or the informal forums held regularly, regarding affairs of global interest)<sup>17</sup>.

The concept of “eco-development” was used on the first UN conference (Stockholm, 1972) on the environment, being proposed by a group of experts (called the Founex Group), to settle the tension in the countries from the South, which were suspicious of the proposal for a new ideology, beneficial for the industrialized North, using the ecosystem preservation as a pretext to refuse them the right to development<sup>18</sup>. In this context, the concept of “*eco-development*” was proposed specifically to convince the countries in the South on the compatibility between the environmental protection and their right to economic

development, with the ecosystem protection becoming a dimension of economic development. Although the concept was seriously contested, it dominated for a while the discourse on development and on the environment (1971-1974), to be contested again by the USA, with the oil crisis in 1974 and the tensions between the North and the South, followed by a true interdiction to introduce the concept in the global agenda<sup>19</sup>.

Subsequently, the concept was reintroduced and renamed by the International Union for Preservation of Nature, by launching a *world preservation strategy*, which used for the first time the phrase “sustainable development”. The strategy was launched in 1980, with the intention to reach a compromise between the need to develop and the need to *preserve* the environment. However, a part of the doctrine noted that this is *a restrictive concept* in relation to the eco-development (which proposes an environmental policy broader than the mere preservation of nature)<sup>20</sup>.

Only in 1992, at the UN Conference in Rio, was the concept of “sustainable development” introduced, as a re-analysis of the relation between development and the environment. Again, the doctrine considered that, in relation to the comprehensive phrase “eco-development”, the concept of “sustainable development” *does not bring any real innovation*, creating instead “the necessity to integrate the natural

capital in its reflection on the welfare”<sup>21</sup>.

We consider that, at the beginning of the XXI<sup>st</sup> century, *it is necessary to bring back on the table the discussion about the global agenda of the complex concept of “eco-development”,* in which the complex dimension of “*environmental policy*” (including the three pillars of sustainable development – economic, social and environmental) are harmonized with the peoples’ right to development (*a solidarity right*, however, which must also be regarded as *a collective right, interconnected* to the right of the peoples to a healthy and clean environment<sup>22</sup> and not as *a right isolated* from other solidarity rights). The concept of “*eco-development*” has not exhausted its senses and legal applications, at the level of inter-national law, as it had to be rediscovered by the jurists of the XXI<sup>st</sup> century and used as a basis for a global environmental law and for the global eco-diplomacy, as presented hereinafter.

### **A Global Environmental Law**

The definition of the “*environment*” reflects in the very phrase to which it refers (a pleonasm) a limited human vision of nature, reduced to a number of elements “surrounding the human being”, with which the human being (from the rigorous interpretation, close to the original meaning of the phrase) *does not consider he/she interacts, does not consider to*

*be directly connected.* This phrase only reveals a *schizoid attitude*, born when the developed capitalist societies were formed (and, from other perspectives, originating from the very first societies based on the worship of war male deities<sup>23</sup> or in the medieval or imperialist societies, in full process of conquering their colonial empires, but also in small, peripheral societies, which had to defend from the large imperial predators, general *approach* to nature, which has led in history to *destructive behaviours* of the respective boroughs, states or empires towards other urban settlements and towards the nature, even *using destructive tactics* to ensure victory in a war – burning the grasslands, poisoning wells, draining or deviating river beds<sup>24</sup> etc.).

The phrase “*environment*”, which we consider *inadequate, limited and functionalist, expresses and insufficient approach, an attitude of breaking away from nature* (with the human being “protected” from nature, by an artificial, urban habitat, made of concrete and cement), in which nature is “the great wilderness”, yet to be urbanized and tamed, surrounding the human metropolises” (conception born from the deep interpretation of the phrase).

There is *a multitude of definitions* of the phrase “*environment*”, preferred in the legal doctrine, instead of the more comprehensive one phrase “*nature*” (which does not have the functionalist, desacralized, consumerist connotation, specific to the secular, industrialized societies, of “envi-

ronment”, which suggests reducing nature to “various components and power, physical, chemical and biological conditions, surrounding a being – in this case, the human being, *our note* – or the groups of beings” – in this case, human societies, *our note*<sup>25</sup>.

We note here the legacy-based conception of the “environment”, also originating from the decision of the Italian Constitutional Court, dated December 30<sup>th</sup> 1987, in which the environment is regarded as “*an intangible unitary item*” with its various components, each being the object of protection separately, and all representing a unit, overall. *The same view, reflecting an inevitable functionalist and legacy-based perspective of nature*, also occurs in definitions presented in international documents, in the field international environmental law, such as the Convention on the civil liability for damages caused by activities hazardous for the environment, under the aegis of the Council of Europe, in Lugano, open for signing on June 21<sup>st</sup> 1993. Here, the environment is defined as formed of “living and non-living natural resources, such as air, water, soil, subsoil, flora and fauna, as well as the interactions among these factors, the goods forming the cultural legacy and aspects characterizing the landscape”<sup>26</sup> (where nature is *reduced* to the landscape, to resources to exploit, living or non-living, to cultural goods or all of the above, together).

A comprehensive definition, in which the human being is no longer considered a being with *unlimited*,

*absolute* property rights – *in the sense of lack of related responsibilities* – over nature; instead, the human being is *a being in close and permanent relation with nature, from which the human being cannot withdraw without threatening his/her very existence and civilization*, is also de definition given by the Council Directive EC 85/337/CEE dated June 27<sup>th</sup> 1985, stipulating that “*the environment includes the human being, fauna and flora, soil, water, air, climate and landscape, interaction among the above-mentioned factors, material goods and cultural legacy*”.

In another view of nature, *the human being is again separated from the former*, it is not considered that the human being is part of nature (which is “a mere framework for the human being”), with a distinction between “a natural environment” and a “perception environment” (or cultural, artificial environment). Thus, the environment represents the “set of elements which, in the complexity of their relations, represent *the framework, environment and conditions* for the human lives, *as existing or as perceived*”<sup>27</sup>.

A global comprehensive definition (but which does not get rid of the mainly functionalist notes) is the one given by the Romanian legislation (GEO 195/2005, approved by Law no. 265/2006), in which the environment incorporates, as a legal concept, *a complex reality*, formed of atmosphere, biosphere, geosphere, socio-sphere and cosmos. *The living beings, including the human being, are*

*elements included in the definition of the environment*, together with the conditions that can influence “the welfare and health of the human being” or “the quality of life”<sup>28</sup>.

At the same time, the doctrine draws attention on the fact that the “environmental legislation” is more comprehensive than “the effective environment protection legislation”, starting from the premise that the environmental policy has to be treated by the governments as having the same importance as the economic policies of the states<sup>29</sup>.

*In the XXI<sup>st</sup> century societies, the “environment” concept is acknowledged as a dynamic one, being enriched by the social and technological progress, as well as by the evolution of human conceptions of the relation with nature. It is also enriched from understanding the uniqueness and fragility of the terrestrial ecosystem.* This concept will be legally interpreted in a broader sense, during the XXI<sup>st</sup> century up to the point in which, as the doctrine noticed, it includes “all the aspects of the human activity, in the human being-nature relation, on the same planet, Earth, relation which constantly evolves and adds new meanings”<sup>30</sup>.

Concerning the occurrence and development in the XXI<sup>st</sup> century of *an authentic environmental law (or, better said, of a “nature’s” law)*, we must start from the broad view in the doctrine of the environmental law which, although a distinct branch of law, infuses with its concepts and principles several other branches of

law (international law, land registration law, administrative law, business law, European community law, peace law etc.), creating a multitude of interconnections among them<sup>31</sup>. Moreover, the doctrine noted the horizontal character of this law (covering various sectors of law, such as the public and private sector), as well as its interactive nature, as it tends to influence all the law branches, in order to introduce the term “environment”. In addition, the doctrine acknowledges “the conceptual structurally systemic unity”, derived from “Earth’s environmental uniqueness and indivisibility”, between the national and international dimension of environmental law<sup>32</sup>. Thus, through its content and the nature of the terrestrial ecosystem, *the environmental law exceeds the strict westphalian conception*, that of a world divided into states with sovereign territories. Terms such as “progress” or “poverty”, “North-South divide” *reflect in fact the global view on environment*<sup>33</sup>, with predominantly negative influences from the activities of the industrial and consumption societies, which tend to become globalized themselves.

In other words, the occurrence and development of an environmental global law are *a response to the global challenges brought by the spread of the consumption society model and of the model of capitalist societies (which are not limited or truly competed against by environmental models of companies, instead they neighbour so-called anti-capitalist societies,*

*which do not propose an environmental conception of their policies regarding the environment and regarding all the human activities resulted from the requirement to protect and preserve the environment).* More specifically, the globalization of economy and capitals, the increasing influence of the corporations from large powers or of transnational corporations, the wars, underdevelopment, global accumulation of profit, consumption societies, global warming, all these aspects cause *irreparable damages to nature and the human civilization, overall, as well as creating a true survival problem for the human species, in the terrestrial habitat, unless the human vision of nature and in relation to it changes.*

The nature's global law in the XXI<sup>st</sup> century will comprise a precise set of rules, regulations, global legal regimes and global institutions, applicable for the main actors of the XXI<sup>st</sup> century global society (states, corporations, global mass media) and *will develop a real environmental-legal responsibility of these actors, in order to ensure the uniqueness and integrity of the terrestrial ecosystem, based on a model of post-corporate, post-consumerist human society, built on a relation of harmony and protection of nature, instead of a relation of exploitation/dominance/destruction of the forest, as it has been so far*<sup>34</sup>.

Global environmental legislation would include "the entire ecological environment, in which the

quasi-totality of human activities takes place"<sup>35</sup>, as proposed in the doctrine.

Besides its attachment to the component of the global environmental ethics, the global environmental law would include *the current international legal regime* which currently forms the international environmental law: for example, the series of international treaties and covenants signed and ratified by the states, for the protection of various environment components: UNESCO Covenant on the world cultural and natural heritage/Paris, 1972; Aarhus Covenant on access to information, public participation in the decision-making process and access to justice, in environmental matters/ 1998; Basel Covenant regarding the control of cross-border transport of hazardous waste products and their disposal; Ramsar Covenant/1971, on the wet areas of international importance, especially as habitats for aquatic birds etc.

We consider that the set of legal or declarative documents which can be developed progressively in a body of global regulations with mandatory legal value, concerning the environment, are the following: Stockholm Declaration/1972, Rio Declaration on Environment and Development/1992 and Agenda 21, also adopted in 1992, following the United Nations Conference on the Environment and Development from Rio, the Millennium Development Objectives adopted through the Resolution of the UN General Assembly 55/2, the Johannesburg Declaration on

Sustainable Development/2002 and others as such<sup>36</sup>.

### **Rights of Nature and Representation, Protection of Such Rights, in Relation to the Human Rights**

In international relations, the environment can be defined as “the totality of natural and artificial environments, in which the human being is installed, which he/she exploits and organizes, as well as the totality of non-anthropized environments, required for the survival of the human being”<sup>37</sup>. We note in this definition that it is one which considers the human being to be of supreme value in relation to nature, as the human being is self-placed on a superior hierarchical position, in relation to the former, *on a position of command, predominantly construed as a position of “exploitation of nature”, “modifying nature”, according to the interests and visions of the human being, as an expression of the materialist ideologies (communist, capitalist)*, in which the human being considers that he/she is more of a master of nature and less (or at all) of a being *in intrinsic connection with nature, being part of the same fragile and complex ecosystem*. For many centuries, *especially after the rise of the occidental industrial civilizations, the human being knowingly perturbed the delicate balance of nature*, in order to modify the natural environment in which he/she lived,

according to the human requirements on industrial civilization, deforesting large forest surfaces, to make room for the railways, industrial cities, agricultural land, deviating the river courses and polluting the natural habitats, hunting on a large scale, for teeth and furs, polluting nature with industrial and domestic waste products, which were either non-recyclable or toxic<sup>38</sup>.

*Large industrial civilizations that have reached their peak at the end of the XX<sup>th</sup> century (although, nowadays, the competition against new concepts of eco-cities and eco-societies is growing) have represented the triumphant expression of the materialist thinking, lacking in the sacred perception and respect for the nature*. Objectives that nowadays begin to be considered more and more when elaborating the public policies and even represent important talking points on the global agenda, at the summits of the large industrialized powers, such as environmental protection and preservation, have been ignored, minimized or despised by the public actors (developing countries, advanced industrial countries) and by the private actors (multinational corporations, national corporations representing true international networks of trade in products, exotic species, rare metals, for the exploitation and hunting of which they have severely, sometimes irreversibly modified natural habitats in the non-occidental regions of the globe<sup>39</sup>), during the rise of these industrial civilizations.

Only at the beginning of the XXI<sup>st</sup> century, *the materialist model*, based on irrational exploitation of nature by the human being, self-considered master with unlimited rights over nature, which he/she is free to use as he/she pleases, abusing the power (*in the fever of progress, these industrialized or developing societies mistook ruling for destroying nature*<sup>40</sup>), begins to be questioned by increasingly more voices, at national, regional and international level.

Nature changes its position, from the (legal, political, social) role of “object” (of will, action, interests of the human being), becoming more and more of a *distinct legal subject*, in the innovative conception of eco-politics, ecology, theo-politics, the global environmental law, beside the classical conceptions (natural person, legal entity – i.e. the corporation).

In the *classic conception* (now questioned by the national and international environmental movements), the right to property (of the natural person and particularly of the legal entity – state or corporation) was presented by jurists as a sacred, absolute right, *plena in re potestas* (Justinian’s conception), or expressing a liberal individualist logic *taken to the extreme* (conception of the French Civil Code dating back to 1804). *Not only liberalism, but also communist, Marxist or socialist materialist conceptions focused on progress at any cost have created distorted visions of nature*, justifying the right of the human being, of the

state, of the collectivity to freely exploit nature, in the absolute sense, without taking responsibility before the future generations, for the current and future quality of the environment. *Irresponsibility in exploiting and widely modifying nature by the state, corporations* (either in the name of economic liberalism, accumulation of profit and new markets, or in the name of the people and of an unlimited right to development for the peoples) *has progressively led to severe, often irreversible disturbances in the “environment”*.

The very phrase (pleonastic) “environment” is *inadequate, reflecting the limits of thinking and perception of an age of exploitation and consumption oriented against nature*. The human being sees himself/herself as “surrounded” by nature, but the human being does not consider that he/she interacts with it or that he/she is influenced by nature. *The man of the XX<sup>th</sup> – XXI<sup>st</sup> century industrial societies falsely considers himself to be isolated from nature, in his artificial habitat*. The interaction of the human being with nature is one of *permanent exploitation of nature and its living elements* (even the pigeons in the loft, the bees in the hive, the fish in the pond and the house rabbits are considered “personal property”)<sup>41</sup>.

The entire flawed conception and action of the human being, in relation to nature, dominating the XIX<sup>th</sup> and XX<sup>th</sup> century and which is only currently questioned, starts from the conception of the human property

right (of the state, of the corporation, of the people, of the collectivity) over nature, as an absolute, sacred, intangible, inviolable and infeasible right, regarding any item “natural or manufactured, alive or dead, tangible or intangible”. As shown in the doctrine, the dissemination of the flawed conception of the French Civil Code and the Roman law (the right to property) on property *has led to a transformation of all the natural elements into goods with well determined commercial value.*

The 1804 French Civil Code stipulated that “property is the right to enjoy and use goods in an absolute manner, on condition that they not are used in a manner forbidden by law or other regulations” (conception disseminated in most of the 19<sup>th</sup> century civil codes)<sup>42</sup>.

Thus, *nature was regarded as nothing but a mere object, which was in turn divided into a series of elements, each with a determined commercial value, which the human being (as well as the legal entity, such as the state, collectivity or corporation), as owner, had the right to possess, exploit, use in an absolute, exclusive and continuous manner.*

*The industrial civilizations of the XIX<sup>th</sup> – XX<sup>th</sup> century, both the advanced and in the developing civilizations, saw serious abuses, most often irreparable, against nature, only in the name of exercising this conception of the right to property. The human being (as well as the state, collectivity, corporation) beco-*

*mes holder of real absolute rights, master of nature, entitled through the legislative codes enforcing such legal view to alienate, buy and use the natural resources, to use them freely, until the point of *polluting it, modifying nature, irrationally exploit the planet’s resources, down to the point of draining them.* Thus, *the human right to property over nature is converted in an absolute right to rule over nature, until the point of freely destroying the unique elements of nature and of modifying natural habitats, in the name of accumulating profit, of conquering new consumption markets.**

Only at the end of the XIX<sup>th</sup> century, following the threats against *public goods* (including natural resources of the soil, subsoil), caused by intensive agriculture, using chemical fertilizers, there was an attempt to form the legal concept of “*public domain*”, which must be protected “for the general interest”. Thus, for the public interest, the state assumed the right to reduce the private property<sup>43</sup>.

Currently, the evolution of conceptions regarding the property right in relation to the environment tends to favour *a social and environmental function of the property right*, by virtue of which *the holder must exercise the right mainly taking into consideration the general interest in protecting and preserving nature, as well as the necessity to ensure the survival of the human species on this planet*<sup>44</sup>. To this end, the tendency is *to consolidate the international*

*regimes concerning the protection and preservation of the environment, which is part of the concept of “sustainable development”, connected to the environmental security and the mixed concept of “global good governance”. All these innovative concepts of the XXI<sup>st</sup> century society tend to pay increased attention to the common resources, which are in danger to be over-exploited down to draining, because they are not protected by the regulations of private property<sup>45</sup>.*

Far from adopting another flawed conception (that of privatizing the entire environment, in order to avoid the destruction of common goods), global governance, sustainable development and environmental security, as well as global eco-politics pay a closer look at the development of political and legal new methods and means, adequate for the need for enhance protection of nature.

Thus, *the creation of a legal status of nature, in the sense of granting the status of legal entity<sup>46</sup>*, was proposed, at national, regional and international level, with nature benefiting from specific institutions and representatives, to act on its behalf in court, before states, corporations, individuals inadequately exercising their right to property. A truly efficient protection, which really balances the legal relation between the human being (also state, corporation, collectivity) and nature (including natural elements) goes in the direction of *granting a set of specific rights to nature as a legal*

*entity, granting a legal personality, through which these rights of nature receive acknowledgement and concrete protection through justice and at any level (regional, national, global), against the rival interests of the corporations, states and individuals<sup>47</sup>.*

The anthropocentric conception of nature as an object of the property right of the human being/state/corporation, conception positioning the individual (and, through the individual, the state or corporation, as representatives of collective, public or private interests) above nature, a position of *command and control, without developing environmental ethics, a set of moral values and legal-political responsibilities, to limit this position of command and control over nature*, has led to *the development of a systematic abusive actions, severely harmful for the nature, for centuries.*

Currently, in order to repair a situation of global injustice and severe damaging of nature, the jurists proposed *a series of environmental rights, for the protection of nature*, which would be included in the third generation of human rights, the so-called “*solidarity rights*”<sup>48</sup>. From this viewpoint, the jurists propose limiting the individual rights against the environmental rights (regarded as collective rights)<sup>49</sup>. However, it is not only the individual rights that should be limited or combined with the legal dimension of environmental responsibility, *but also the property rights (public and private) of the state and*

*of other actors (corporations) which, through their public or private policies, have a direct, significant impact, if not major, on nature.*

**Eco-diplomacy: an Inclusive Diplomacy (Human Being and Nature) or an Exclusive, Dichotomic Diplomacy (Human Being versus Nature)?**

When assessing and defining *eco-diplomacy* as a multi-dimensional concept, specific to acting in the XXI<sup>st</sup> century global world, we must start from *the three conceptions of the environment*: anthropocentric conception (the human being as the main actor in the relation with nature, influencing it and modifying it through the urban life, demography, transports, commerce, economy, war, political options, ideological and religious views); the conception focusing *on nature* (the idea that environment preservation and protection against the destructive action of the human beings, the states and corporations entails the creation of a global agenda, the creation of environment protection consolidated international regimes<sup>50</sup>, as well as the creation of institutions able to protect nature as a distinct actor, in relation with the other actors); the *technology-oriented* conception (there is a relation between nature and technology/ civilization, in which the second element has an influence on nature, which is not always beneficial, hence the

problems regarding the power and risk of genetic manipulations)<sup>51</sup>.

Thus, *global eco-diplomacy* becomes a set of instruments and rules, institutions and diplomatic forums, organized from time to time, at first, then regularly, *at global level*, where *various global actors* (states, corporations, environmental representatives, global NGOs and media etc.) negotiate methods of diminishing the global environment risks, methods to provide global and national protection of the environment, setting the bases for future legal regulations, institutional regulations and political concepts, concerning the global protection and preservation of the environment.

*Through eco-diplomacy, the environment becomes an active element of the global policy developed (for the time being) by the global actors* (large powers, transnational or national corporations, media, religious cults, transnational environmental NGOs etc.)

*Nature becomes an element included in discussions and negotiations on the global agenda, stage preceding the stage in which the global society of the XXI<sup>st</sup> century, nature itself will have specific rights, as a distinct legal entity, in the global diplomatic relations* (in relation to the states and large corporations affecting the terrestrial ecosystem, through their private or public policies), being able to take legal action through its representatives against the parties damaging these rights. *For the time being, the nature's rights are regar-*

*ded as human rights, as collective rights; therefore, there is still an anthropocentric conception of nature, which does have its own means (through representatives) of protecting its interests, from the legal and political standpoint, in relation to the human being, to the state, the human collectivities or corporations.*

Eco-diplomacy would mean that *the special representatives of nature* (lawyers, High Representatives, at regional, national, local or global level, regarding the Protection and Preservation of Nature, if we were to propose a name) be able to participate in discussions and negotiations or to be able to hold liable the representatives of the states, corporations (national and transnational) and the individuals (as owners) for abuses against nature or for the flawed, improper, malevolent exercise of their property right (public or private); such participation and exercise of rights should be made *from an equal standpoint (if not, from a position of legal superiority, to compensate for the centuries-old abuse exercised by the human being against nature, during the rise of the industrial-consumer-polluting civilizations).*

### **Certain Conclusions**

The protection and preservation of environment must become the focus in shaping and consolidating the content of certain key-concepts, for the international relations and even

for the international law of the XXI<sup>st</sup> century: global governance, good governance.

The entire flawed conception and action of the human being, in relation to nature, with the former dominating the latter throughout the XIX<sup>th</sup> and XX<sup>th</sup> century, being only now brought into discussion, starts from the perception of the human property right (the state, the corporation, the people, the community) over nature, as an absolute, sacred, intangible, inviolable and infeasible right, regarding any item “natural or manufactured, alive or dead, tangible or intangible”. As shown in the doctrine, the dissemination of the flawed conception of the French Civil Code and the Roman law (the right to property) on property *has led to a transformation of all the natural elements into goods with well determined commercial value.*

Therefore, *a true eco-diplomacy of the global society in the XXI<sup>st</sup> century* would not be the one led by the states, the individuals, in the name of nature, because *the rights and interests of nature are in conflict with the property right of the individual, states and corporations.* True eco-diplomacy does not entail discussions and negotiations of the global actors, *about nature* (which continues to be regarded as *an object*); instead, it represents *a great innovative leap, in the civilist and internationalist conception of nature (i.e. seen as a living being, as a living, unique ecosystem, with its own personality).*

Thus, the XXI<sup>st</sup> century eco-diplomacy would mean that the diplomatic discussions and negotiations be handled *in an innovative legal relation* between the human being/state/corporation, on one hand, and *nature, through its special representatives, on the other.*

From this perspective, we consider that, during the XXI<sup>st</sup> century,

*global environmental protection regimes, global institutions for the protection of nature with higher representatives, independent from the states and corporations, can be consolidated, in order to exclusively monitor the protection of nature's rights, within a global protection law for the environment and the planet, as a unique ecosphere.*

## Notes

<sup>1</sup> The present article represents only the personal opinion of the author and it does not involve in any form any other natural person or legal entity.

<sup>2</sup> Marie Claude Smouts, Dario Battistella, Pascal Vennesson, *Dictionnaire des relations internationales*, Dalloz, Paris, 2006, pp. 251-252.

<sup>3</sup> *Idem*, p. 251.

<sup>4</sup> Graham Evans, Jeffrey Newnham, *Dicționar de relații internaționale*, transl. Anca Irina Ionescu, Editura Universal Dalsi, București, 2001, p. 210, which quotes two reports as a doctrine basis for the concept of "global governance": "Common Responsibilities in the '90s: The Stockholm Initiative for Global Security and Authority"/1991 and "Our Global Neighbours: Report of the Commission for Global Authority"/1995.

<sup>5</sup> *Idem*, p. 210.

<sup>6</sup> David Held, Anthony McGrew, David Goldblatt, Jonathan Perraton, *Transformări globale. Politică, economie și cultură*, transl. Ramona-Elena Lupașcu, Adriana Ștraub, Mihaela Bordea, Alina-Maria Turcu, Editura Polirom, Iași, 2004, pp. 73-81.

<sup>7</sup> Graham Evans, Jeffrey Newnham, quoted op., p. 212.

<sup>8</sup> Marie Claude Smouts *et alii*, quoted op., p. 252.

<sup>9</sup> *Idem*.

<sup>10</sup> For more information, see David Held *et alii*, quoted op, pp. 89-98. Similarly, about the North-South divide, see Mohammed Bedjaoui, *Pour un nouvel ordre économique international. Nou-veaux défis au droit international*, UNESCO; PUF, Paris, 1978, pp. 34-35.

<sup>11</sup> Marie Claude Smouts *et alii*, quoted op., p. 250.

<sup>12</sup> *Ibidem*.

<sup>13</sup> David Korten, *Marea Cotitură. De la imperiu la comunitatea terestră*, trad. Mihnea Columbeanu, Antet XX Press Publishing House, 2007, pp. 67-74.

<sup>14</sup> Vasile Pușcaș, *Relații internaționale/transnaționale*, Editura Sincron, Cluj Napoca, 2005, pp. 70-71.

<sup>15</sup> David Korten, quoted op., pp. 215-216.

<sup>16</sup> Daniela Marinescu, *Tratat de dreptul mediului*, ed a IV-a, Editura Universul Juridic, București, 2010, p. 48-49. David Korten, quoted op., pp. 56-62. David Held *et al.*, quoted op., pp. 425-426.

<sup>17</sup> David Held *et alii*, quoted op., pp. 86-87.

<sup>18</sup> Marie Claude Smouts *et alii*, quoted op., pp. 128-129.

<sup>19</sup> *Ibidem*, p. 128-129.

<sup>20</sup> *Ibidem*, p.130-131.

<sup>21</sup> *Ibidem*, p. 131.

- <sup>22</sup> Raluca Miga-Beșteliu, *Drept internațional. Introducere în dreptul internațional public*, Editura All-B, București, 1998, pp. 199-200.
- <sup>23</sup> David Korten, quoted op., pp. 88-90.
- <sup>24</sup> Mircea Malița, *Cumințenia pământului. Strategii de supraviețuire în istoria poporului român*, Editura Corint, Bucharest, 2010, pp. 31-38, 42.
- <sup>25</sup> If we quote only the first part of the given definition, given for example to the environment, by scientist Emil Racoviță, it is interesting to note the balance between the functionalist approach to nature (adopted by the human being, as active element, with exclusively dominating role, exploiting nature) and the holistic approach, acknowledging eventually that “the human being is in a close relation to nature and that this relation is vital, unique and irreplaceable, condition of the very human existence on Earth ... on which the fate of the human being depends and whose action causes a reaction in the so-called being”. Emil Racoviță, quoted in Ștefan Vancea, *Curs de ecologie generală*, Univ. „Al. Ioan Cuza”, Iași, 1972, p. 17, quoted in Daniela Marinescu, quoted op., p. 55).
- <sup>26</sup> Daniela Marinescu, quoted op., p. 45.
- <sup>27</sup> Michel Prieur, *Droit de l'environnement*, citat în Daniela Marinescu, quoted op., p. 45.
- <sup>28</sup> Daniela Marinescu, quoted op., pp. 45-46.
- <sup>29</sup> *Idem*, p. 46.
- <sup>30</sup> Daniela Marinescu, quoted op., p. 47.
- <sup>31</sup> *Idem*, pp. 49-50.
- <sup>32</sup> *Ibidem*, p. 50.
- <sup>33</sup> *Ibidem*, p. 47.
- <sup>34</sup> David Korten, quoted op., pp. 238-240, 245-253.
- <sup>35</sup> Daniela Marinescu, quoted op., p. 46.
- <sup>36</sup> Daniela Marinescu, quoted op., pp. 17 și urm.
- <sup>37</sup> Marie Claude Smouts, quoted op., p. 201.
- <sup>38</sup> Daniela Marinescu, quoted op., pp. 9-13.
- <sup>39</sup> David Held *et al.*, quoted op., p. 469, 183-185.
- <sup>40</sup> Mircea Duțu, Andrei Duțu, *Dreptul la proprietate și exigențele protecției mediului*, Editura Universul Juridic, București, 2011, pp. 29-30.
- <sup>41</sup> *Idem*, p. 11.
- <sup>42</sup> *Ibidem*, p. 29.
- <sup>43</sup> *Ibidem*, pp. 30-32.
- <sup>44</sup> *Ibidem*, p. 33.
- <sup>45</sup> Certain authors also use the concept (in the international environmental law) of “common heritage of the humanity”, in order to eliminate an irrational exploitation of natural resources. See Irina Moroianu Zlătescu, *Human Rights, A Dynamic and Evolving Process*, Editura Pro Universitaria, București, 2015, p. 43; Daniela Marinescu, quoted op., pp. 85-86. Also, see Mircea Duțu, Andrei Duțu, quoted op., pp. 186-192. David Held *et alii*, quoted op., p. 97.
- <sup>46</sup> Mircea Duțu, Andrei Duțu, quoted op., p.33.
- <sup>47</sup> *Idem.*, p. 33.
- <sup>48</sup> Irina Moroianu Zlătescu, quoted op., p.42.
- <sup>49</sup> Mircea Duțu, Andrei Duțu, quoted op., p. 35.
- <sup>50</sup> David Held *et alii*, quoted op., pp. 95-97.
- <sup>51</sup> Marie Claude Smouts-, quoted op., p. 201.

## References

Bedjaoui, Mohammed, *Pour un nouvel ordre économique international.*

*Nouveaux défis au droit international.*, UNESCO, PUF, Paris, 1978.  
Beșteliu, Miga, Raluca, *Drept internațional. Introducere în dreptul inter-*

- național public*, Editura All-B, București, 1998.
- Duțu, Mircea; Duțu, Andrei, *Dreptul la proprietate și exigențele protecției mediului*, Editura Universul Juridic, București, 2011.
- Evans, Graham; Newnham, Jeffrey, *Dicționar de relații internaționale*, transl. Anca Irina Ionescu, Editura Universal Dalsi, București, 2001.
- Held, David; McGrew, Anthony; Goldblatt, David; Perraton, Jonathan, *Transformări globale. Politică, economie și cultură*, transl. Ramona-Elena Lupășcu, Adriana Ștraub, Mihaela Bordea, Alina-Maria Turcu, Editura Polirom, Iași, 2004.
- Korten, David, *Marea Cotitură. De la imperiu la comunitatea terestră*, transl. Mihnea Columbeanu, Editura Antet XX Press, Prahova, 2007.
- Malița, Mircea, *Cumințenia pământului. Strategii de supraviețuire în istoria poporului roman*, Editura Corint, București, 2010.
- Marinescu, Daniela, *Tratat de dreptul mediului*, ed. a IV-a, Editura Universul Juridic, București, 2010.
- Moroianu, Zlătescu, Irina, *Human Rights, A Dynamic and Evolving Process*, Editura Pro Universitaria, București, 2015.
- Prieur, Michel, *Droit de l'environnement*, quoted in Marinescu, Daniela, *Tratat de dreptul mediului*, ed. a IV-a, Editura Universul Juridic, București, 2010.
- Pușcaș, Vasile, *Relații internaționale/transnaționale*, Editura Sincron, Cluj-Napoca, 2005.
- Smouts, Marie Claude; Battistella, Dario; Vennesson, Pascal, *Dictionnaire des relations internationales*, Dalloz, Paris, 2006.
- Vancea, Ștefan, *Curs de ecologie generală*, Editura Universității „Al. Ioan Cuza”, Iași, 1972, p. 17, quoted in Marinescu, Daniela (2010), *Tratat de dreptul mediului*, ed. a IV-a, Editura Universul Juridic, București, 1972, p. 55.