

**DAÑO AMBIENTAL:  
RESPONSABILIDAD AL CAUSANTE**

**Resumen**

El presente estudio dedicase a contextualizar el daño ambiental y la importancia de la responsabilidad de aquél, persona física o jurídica, causar daño al medio ambiente. No se puede permitir que, en nombre de la rentabilidad y del desarrollo económico, la naturaleza sea destruida. El hombre, la industria, el capitalismo, no solo, pero también el mundo todo depende de los recursos naturales. Es posible llegarse hasta una concientización ecológica mundial a través del desarrollo sostenible, de la responsabilidad de uno que actúe en contra y, principalmente, de un esfuerzo colectivo. La base de apoyo al Derecho Ambiental es la responsabilidad civil, cuando haya el incumplimiento, ella debe tener valor muy alto, como medio de punición y de enseñar al causante del daño a través de la represión económica de impacto.

**Palabras clave:** Desarrollo sostenible. Daño ambiental. Responsabilidad. Derecho Ambiental.

**ENVIRONMENTAL DAMAGE:  
MAKE THE DAMAGER RESPONSIBLE**

**Abstract**

The present study was done in order to contextualize the environmental damage and the importance to make responsible who, physical or juridical person, damage the environment. It must not allow that, in the name of the profitability and the economical development, the nature will be destroyed. The man, the industry, the capitalism, as well, the whole world depends on the natural resources. It is possible to reach out a worldwide ecological conscience through the sustainable development, the responsibility for who acts against it, and mainly, through a collective effort. The Environmental Law support is the civil responsibility, which in case of noncompliance, must be a very high numeral, as way to punish and to teach the damage causative by the impact economical repression.

**Key words:** sustainable development. environmental damage. Responsibility. environmental law.

*Recibido:* 2 de mayo de 2015.

*Aceptado:* 28 de Julio de 2015.

**FRANCIELI IUNG IZOLANI**

Lawyer, Graduated in Law by Regional do Noroeste do Estado do Rio Grande do Sul University - Brazil, Pos-graduated in Social Security Law by Uniderp – Brazil, Pos-graduated in Constitutional Law by Uniderp – Brazil, Pos-graduating in Civil Law by Uniderp – Brazil, and PhD Student in Civil Law at Law College of Buenos Aires University – Argentina.

# Environmental damage: make the damager responsible

## Introduction

We live in a consume society, where the capitalism and the globalization lead to the maximum natural resources breakdown, due to the exclusive goal: the highest profit acquirement.

For a long time the nature and the environment where we live have called our attention. The clear evidence of that can be verified by the climate changes all over the world: on the one part, the floods and windstorms, while on the others, there is drought and lack of water, without mentioning the polar cap melting, the extinction of fauna and flora species, and more and more sickness people for industries' disordered pollution.

Researchers and experts have thought and tried to do a lot in order to minimize the consequences brought by the human's careless with the nature, however, in the most of the world where the enrichment is above of anything, only with a very high pecuniary punishment that would affect the industries' profitability in a very hard way, perhaps it would get possible to reduce this disordered rhythm of environmental destruction we have daily lived.

In this aspect, the role of the Law is primordial, because it can make possible the legal provision to identify the damages and consequently punishment to the offenders. Though it is not enough an individual action, it is necessary to think about an effective international environmental law, making it obligatory on the whole world, without exceptions.

In spite of the United Nation Organization (UN) has done something for the environment, it has not been enough. It must not be accepted, no way, countries that do not ratify the decisions to reduce the pollutant emission rate.

Something has to be done, because the biggest polluters of the planet always end up managing to stay apart from environmental reduction agreements on behalf of the profitability and the concern to be the richest and the most productive country in the world. And if the world ends up, what would be the reason of all of that?

Therefore, it is important to study since the emergence of the environmental protection's defense, and this way it is possible to seek an appropriate solution to make responsible the environmental damagers.

## 1. Environmental protection history

Since the beginning of the humanity, man has got a relationship with nature through the natural resource exploration, in order to survive throughout the times. It was like that for centuries until the modern time, when the way to think about the economy has started to change.

However, through the evolution and, mainly, with the advent of Industrial Revolution, a modification in that relation occurred. Man let out the surviving goal to start the use of nature as a profitability source. Nevertheless, he began to use the environment without any concern, which could cause the end of it.<sup>1</sup>

At this point, it is important to define what the environment is, so that way it can be better understood its importance face to humanity and its concern for preservation. According to Peru's Environmental Ministry<sup>2</sup>, he term "environment"

hace referencia a un sistema, es decir, a un conjunto de variables biológicas y físico-químicas que necesitan los organismos vivos, particularmente el ser humano, para vivir. Entre estas variables o condiciones tenemos, por ejemplo, la cantidad o calidad de oxígeno en la atmósfera, la existencia o ausencia de agua, la disponibilidad de alimentos sanos, y la presencia de especies y de material genético, entre otras.

The Environmental National Policy Law in Brazil<sup>3</sup> also conceptualizes environment as the set of physical, chemical and biological conditions, laws, influences and interactions that is home to life in all its forms.

The environmental protection matter is something very recent in human history. As it was said before, it has begun a long time after the Industry Revolution, during years of exploration and depletion of natural resources.

The international conferences about the environment and the documents produced due to them, such as Treaties, Protocols, Conventions and others

1 Oliveira, Marcela Matos Fernandes de; Monteiro, Márcio Augusto Ferreira. **O poder público e a preservação do meio ambiente**. Jus Navigandi: Teresina, 2014. Available in: <<http://jus.com.br/artigos/30304>>. Access in: Sep. 29th 2014.

2 MLA. **El concepto de medio ambiente**. Manual de Legislación Ambiental: Lima, 2014. Available in: <<http://www.legislacionambientalspda.org.pe>>. Access in: Sep. 30th 2014.

3 Brasil. Lei n. 6.938, de 1981. Available in: <<http://www.planalto.gov.br>>. Access in: Sep. 30th 2014.

influenced the countries around the world to think about the environmental issue, even though in different proportions between them.

## 1.1 *Important events*

Without much international connotation, on the nineteenth century, some nature exalting movements appeared, as the case of the American writer Henry David Thoreau. After, with the Second World War, concerns about pollution by radiation due to the nuclear age became one of the environmental movement bases, however, incipient. After some years, again, a new movement emerged, supported by “Silent Spring” publication in 1962, a Rachel Carson’s book, and its worry with agricultural use of synthetic chemical pesticides. Seven years later, due to the man’s way to the Moon and the first Earth’s photograph from the space, a new human feeling for the planet beauty and simplicity was woken up, as it were a new collective conscious<sup>4</sup>.

This way, a true feeling of world concern about the planet’s sustainable usage was emerging, had as its official mark the year of 1972.

### 1.1.1 *Stockholm 1972*

The initial mark of concern spreading with the environment and its protection in the world was begun with the Stockholm Conference, in 1972. It was called the First United Nation Conference on the Human Environment, the first great meeting organized by the United Union to discuss about environmental matters<sup>5</sup>.

In that event, present countries decided to create institutional and economical permanent mechanisms, so that way, they could coordinate and stimulate actions with the goal of improving and protecting the environment. Therefore, they created the United Nation Environment Programme (UNEP)<sup>6</sup>, with its headquarters in Nairobi, Kenya. Nevertheless, the Conference also provided the recommendation to set up the Environmental Education International Program (EEIP), known as Recommendation 96, where the importance about an environmental education was emphasized as strategy against the environmental crisis<sup>7</sup>.

4 ONU Br Nações unidas no Brasil. **A ONU e o meio ambiente**. 2014. Available in: <<http://www.onu.org.br>>. Access in: Sep. 19th 2014.

5 Brümmer, Simone. **Histórico dos movimentos internacionais de proteção ao meio ambiente**. Jus Navigandi: Teresina, 2010. Available in: <<http://jus.com.br/artigos/18162>>. Access in: Sep. 29th 2014.

6 Silva, Solange Teles da. **A ONU e a proteção do meio ambiente**. In: Mercadante, Araminta; Magalhães, José Carlos de (orgs.). **Reflexões sobre os 60 anos da ONU**. Ijuí: Unijui, 2005. p. 441-468.

7 Araújo, Thiago Cássio D’Ávila. **Principais marcos históricos mundiais da educação ambiental**. Ambiente Brasil, 2007. Available in: <<http://www.noticias.ambientebrasil.com.br>>. Access in: Sep. 30th 2014.

So, the Conference<sup>8</sup>, in its sixth paragraph, stood out that:

To defend and improve the human environment for present and future generations has become an imperative goal for mankind—a goal to be pursued together with, and in harmony with, the established and fundamental goals of peace and of worldwide economic and social development.

Other point that requires attention is the nineteenth principle of Stockholm Conference of 1972, establishing as indispensable an education effort on environmental matters, to young and adult generations, in order to make easier the public opinion formation and individual's and enterprise's responsible conduct to protect and improve the environment<sup>9</sup>.

Spite of that event had been so important, just modest conquests were gotten<sup>10</sup>, that because according to its 21 principle, in case of doubt, the environmental protection should be on the second plan face to the economical development.

It was necessary to keep it up on the search for a bigger protection of the environment against the capitalism threatens.

New happenings were marking the environmental protection history, like the Environmental Education Regional Meeting for Latin America of 1979, in San Jose, Costa Rica. One year later, the European Regional Seminary about Environmental Education for Europe, North America and the Regional Seminary about Environmental Education in Arab States, in Manama, Bahrain, and the First Asian Conference about Environmental Education, in New Deli, India.

Other impact event for the environmental protectors happened in 1987, with the divulgation of the “Our Common Future” Report, or “Brundtland Report”, where the term “sustainable development” was created.

Closing that post-Stockholm cycle, two important events about environmental education defense happened: the Caracas Declaration about Environmental Management in America of 1988 and the First Seminary about supplies for environmental education of 1989, in Santiago, Chile.

## 1.2 Rio-92

Twenty years later, Rio-92, also known as ECO-92, showed the importance of international cooperation on environmental matters.

8 UNEP. **Declaration of the United Nations Conference on the Human Environment**. Available in: <<http://www.unep.org>>. Access in: Sep. 28th 2014.

9 ONU Br Nações Unidas no Brasil. **A ONU e o meio ambiente**. 2014. Available in: <<http://www.onu.org.br>>. Access in: Sep.19th 2014.

10 Barros, Wellington Pacheco. *Curso de direito ambiental*. 2. ed. São Paulo: Atlas, 2008. p. 15.

In Rio-92, that was also called “Earth Summit”, the countries discussed a lot about the sustainable development pattern, what resulted on the document called Agenda 21.

The chapter 36 of Agenda 21, with the title “Education, Awareness and Training Promotion”, was directed to the environmental education, and it is mentioned by the UNESCO site on the Internet as one of the four more important world documents about environmental education<sup>11</sup>.

That chapter formulated general proposals based on the UNESCO and UNEP fundamental principles, like an education reorienting to the sustainable development, the public conscious increasing and the training promotion.

In Agenda 21, the governments made an economical growth program based on the activities that had as goal the protection and renewing environmental resources, like protecting the atmosphere, combating the deforestation, preventing the water and air pollution, and others<sup>12</sup>.

It is also important to emphasize that in the principle 10 of the Declaration, the matter about the effective access to judicial and management mechanisms, including the compensation and reparation damage, appeared for the first time.

The principle 10 in Rio-92<sup>13</sup> Declaration prescribes that:

Environmental issues are best handled with participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided.

Despite, to the Agenda 21 have total support, the Sustainable Development Commission was established as a Social and Economical Council’s functional commission. Other important conquest in that event was the adoption of the UN Convention about biological diversity and, two years later, a UN Convention about the combat to the desertification, mainly in Africa.

11 Araújo, Thiago Cássio D’Ávila. **Principais marcos históricos mundiais da educação ambiental**. Ambiente Brasil, 2007. Available in: <<http://www.noticias.ambientebrasil.com.br>>. Access in: Sep. 30th 2014.

12 ONU Br Nações Unidas no Brasil. **A ONU e o meio ambiente**. 2014. Available in: <<http://www.onu.org.br>>. Access in: Sep. 19th 2014.

13 UNEP. **Rio Declaration on Environment and Development**. Available in: <<http://www.unep.org>>. Access in: Sep. 28th 2014.

The Rio-92 proportioned a true spreading for a lot of countries: the year of 1993, in Argentina, with the South-American Congress as ECO-92 continuation, and with the Human Right Conference, in Austria; the year of 1994, with the Population World Conference, in Egypt; the year of 1995, with the Social Development Conference in Denmark, with the Woman World Conference in China, and with the Climate World Conference in Germany; the year of 1996 with the Habitat II Conference in Turkey; the year of 1997 with the Environmental Education Ibero-American Second Congress in Mexico, and with Environmental Education Conference in New Deli. In the same year, the last event to emphasize the environmental education was the International Conference about Environment and Society: Education and Public Awareness for the Sustainability in Greece organized by UNESCO and the Greek Government, where around 1.200 experts from 83 countries took part<sup>14</sup>.

Important to mention that Rio-92 was ratified by more than 170 countries, and considered the most important one on the sustainable development matter due to its 27 principles aiming at this goal. Thanks to Agenda 21, new searches were made possible as a way to do not stop the countries' economical development and to think about the preservation of the thing that makes it possible: the natural resources, because it is not possible to mention profitability without raw material in abundance.

Rio-92 was, with no doubt, the most effort trying in order to orienting the humanity for a new development pattern based on the environmental, social and economical sustainable<sup>15</sup>. Other events were done to reinforce the Agenda 21 idea, about sustainable development.

In 1997, there was the Nineteenth Special Session of UN General-Assemble, the Rio+5 Conference, in New York. Five years later, World Summit about Sustainable Development happened, called Johannesburg Summit, the Rio+10, in South Africa. Finally, in 2005, came into force the Kyoto Protocol about the climate changes, after eight years of discussion, when 55% of the countries responsible for the air pollution ratified it<sup>16</sup>.

About the sustainable development, the same UN General-Assemble declared the years from 2005 up to 2014 as the UN Decade for the continued Sustainable Development, having UNESCO as the organizer to help people to develop attitudes according to this sustainable development<sup>17</sup>.

14 Araújo, Thiago Cássio D'Ávila. **Principais marcos históricos mundiais da educação ambiental**. Ambiente Brasil, 2007. Available in: <<http://www.noticias.ambientebrasil.com.br>>. Access in: Sep. 30th 2014.

15 Brasil. Secretaria de Articulação Institucional e Cidadania Ambiental. **Agenda 21**. Available in: <[http://mma.gov.br/agenda\\_21](http://mma.gov.br/agenda_21)>. Access in: Sep. 20th 2014.

16 Brümmer, Simone. **Histórico dos movimentos internacionais de proteção ao meio ambiente**. Jus Navigandi: Teresina, 2010. Available in: <<http://jus.com.br/artigos/18162>>. Access in: Sep. 29th 2014.

17 ONU Br Nações Unidas no Brasil. **A ONU e o meio ambiente**. 2014. Available in: <<http://www.onu.org.br>>. Access in: Sep. 19th 2014.

### 1.3 Rio 2012

Long time before Rio+20, in 2005, Kyoto Protocol generated polemic matters, due to the developed countries wanted its end up, including one of the most polluter countries in the world: the United States.

So, in 2010, Mexico, 194 countries took part in the 16<sup>th</sup> session of the United Nations Framework Convention on Climate Change. It was reaffirmed another time more, the limit of 2 degrees Celsius on global temperature until the end of this century, however, nothing was determined to get to this reducing goal. The Green Climate Fund was also created in order to reduce deforestation<sup>18</sup>.

The pursuit on aims to reduce the gases emission kept on 2011, in South Africa and finally, in 2012, Rio+20 Conference took part in Brazil, twenty years after ECO-92.

Rio+20 happened in order to reaffirm Agenda 21 and one of the most discussed subjects was the green economy, whose fund was created in 2010. The United Nation Conference on Sustainable Development, called Rio+20 in honor to ECO-92, focused on seven areas that needed priority attention, among them, water and sustainable agriculture.

According to United Nations Conference on Sustainable Development site<sup>19</sup>, “*the preparations for Rio+20 have highlighted seven areas which need priority attention; these include decent jobs, energy, sustainable cities, food security and sustainable agriculture, water, oceans and disaster readiness.*”

Despite the intensity of the debates, more than Treaty’s 200 paragraphs are still opened due to matters between the United States and China, economical powers and the most polluters in the world, that for competing between them, do not ratify the sustainable development policies.

This way, stead of there is not how to influence these two so powerful countries, the others follow fulfilling and ratifying measures, making internal regalements and aiming at the environmental protection through the Law.

Here, there is a very important Law area to the planet’s defense: the Environmental Law.

18 Brümmer, Simone. **Histórico dos movimentos internacionais de proteção ao meio ambiente**. Jus Navigandi: Teresina, 2010. Available in: <<http://jus.com.br/artigos/18162>>. Access in: Sep. 29th 2014.

19 UNCS2012. **United Nations Conference on Sustainable Development**. 2012. Available in: <<http://www.uncsd2012.org>>. Access in: Sep. 21st 2014.



## 2. Environmental law

Face to so many events aiming the environmental sustainability, where the environment is respected by the economical and social development, the need to guarantee it through the creation of rights and rules is aroused to avoid people do not respect it and get without a punishment.

Therefore, each country is responsible for the internal incentive as well for policies and regalements with the goal of environmental protection.

It is also important to stand out that the Environmental Law is inside the third generation rights, according to Norberto Bobbio<sup>20</sup>, because he defends that this generation vindicates the right of all people live in a not polluted environment and, for this reason, prevention strategies must be thought as well international adaption and cooperation among nations.

### 2.1 *The Environmental Law in Latin America*

The Environmental Law in Latin America developed on the great environmental events, from the Stockholm Conference in 1972 up to Rio-92 Conference, because the most of the countries' contribution were promulgated for along these twenty years.

According to Raúl Brañes<sup>21</sup>,

En efecto, entre 1972 y 1999, 16 de los 20 países de la región se han dado nuevas Constituciones Políticas, que de diversas maneras han procurado incorporar las modernas preocupaciones de la sociedad latinoamericana. Esto ha permitido, entre otras muchas novedades, que en estas nuevas Constituciones figuren un número importante de disposiciones que se refieren a la preocupación por la protección del medio ambiente y la promoción de un modelo de desarrollo sostenible, que han venido a “enverdecer” estas Leyes Fundamentales.

The first Constitution to promote a sustainable development pattern, explicitly, was Guatemala's Constitution, in 1985, and the second was the Brazilian Constitution in 1988.

However, before those Constitutions, other environmental regalements also existed. In Brazil, there were the Forest Code, Law n. 4.771 of 1965, and the Fauna Law, Law n. 5.197 of 1967. But, only with the Constitution the environment got the deserved emphasis.

<sup>20</sup> Bobbio, Norberto. *Era dos Direitos*. Rio de Janeiro: Campus, 1992. p.6.

<sup>21</sup> Brañes, Raúl. *Informe sobre el desarrollo del derecho ambiental latinoamericano*. México: PNUMA, 2001. p. 12.

The article 225 of the Brazilian Constitution of 1988<sup>22</sup> guarantees the ecologically balance environment as a right of everybody, as well, defines it as a common property and essential to life quality, and for this reason the Public Organs adding the population must spread it and preserve it.

According to Oliveira y Monteiro<sup>23</sup>, the Brazilian Constitution of 1988, about environmental law, has as its bases the intergenerational environmental responsibility principle, or else, this right does not allow only to the recent generations, but also to the future ones. For this reason, the today generations must guarantee the environment and pass it to the future generations with equal or better conditions that they have received.

Going on, with the Environmental Crime Law, Law n. 9.605 of 1998, regulated by Enactment n. 3.179 of 1999 and after by Enactment n. 6.514 of 2008, there was the Agenda 21's fulfillment, created in ECO-92, that is, Brazil passed to prescribe the penalties on administrative, civil and penal areas to those with injurious acts against the environment, it does not matter if it is a physical or a juridical person.

That situation partly accomplishes Agenda 21, because on the ECO-92 opportunity, countries had promised to create laws for environmental damage responsibility as well for the compensation pollution's victims.

The legal bases has been tried to a more effective environmental law, by the analysis of the laws above, however, there is still a lot of application and omission problems.

The existence of an environmental law in Latin America is recent, and it is like that the environmental damage responsibility, however, its countries are much more in front of the rest of the world.

At this point, it is necessary to be studied what the Environmental Law is to get to the environmental damage responsibility.

## 2.2 *Environmental Law Concept*

There are several Environmental Law Concepts known all over the world, nevertheless, some need to be stood out.

22 Brasil. **Constituição Federal de 1988**. Available in: <<http://www.planalto.gov.br>>. Access in: Sep. 10th 2014.

23 Oliveira, Marcela Matos Fernandes de; MONTEIRO, Márcio Augusto Ferreira. **O poder público e a preservação do meio ambiente**. Jus Navigandi: Teresina, 2014. Available in: <<http://jus.com.br>>. Access in: Oct. 29th 2014.

According to José Rubens Morato Leite<sup>24</sup>, the Environmental Law occupies from the nature and the future generations on the risky society where we live, because the risky projections may affect since now and then the future's development and this way it may include the life's development.

It is also important to mention that the Environmental Law is an independent law area, although other law areas can be applied<sup>25</sup>.

The Environmental Law is connected to social and economical development, not only to environmental preservation subject<sup>26</sup>. It was not only created to protect, preserve the environment, because it does not aim to stop the socioeconomical development, but also the relationship among it and the natural resources, on the best possible way in order to not use up the nature, what it would generate social, cultural and economical world's failure.

Furthermore, the Environmental Law role is also to guarantee a person's effective dignity, because the dignified and healthy life is connected to the existence and maintenance of a balanced and healthy environment. That is what a lot of countries' law is prescribed.

Sarlet and Fensterseifer<sup>27</sup> teach that is not possible to concept life with dignity and health without a balanced and healthy natural environment. It is present on the most vital and ordinary human condition matters, beyond that, it is essential to human being surviving as natural specie.

Well, as just the physical people's awareness is not enough due to the biggest polluters are judicial people, it is necessary to talk about environmental damage responsibility.

It is a shame that only education public policies are not efficient to avoid the environmental deterioration. That is why the Environmental Law has brought an important advance: regalements that prescribe the punishment to the damagers through the environmental damage responsibility.

### 3. Environmental damage responsibility

In front of all the judicial bases and with an environmental law being expanded all over the world, the contradictory capitalism versus preservation comes out.

<sup>24</sup>Leite, José Rubens Morato. **Dano ambiental**: do individual ao coletivo extrapatrimonial. São Paulo: RT, 2000.

<sup>25</sup>Canotilho, José Joaquim Gomes. **Introdução ao Direito do Ambiente**. Universidade Aberta, 1998. p. 35.

<sup>26</sup>Queiroz, André. **Direito Ambiental**. Supremo Tribunal Federal, 2014. Available in: <<http://www.stf.jus.br>>. Access in: Sep.10th 2014.

<sup>27</sup>Sarlet, Ingo Wolfgang; FENSTERSEIFER, Tiago. **Direito Constitucional Ambiental**: constituição, direitos fundamentais e proteção do ambiente. 3. ed. São Paulo: Editora Revista dos Tribunais, 2013.

As the men act disorderedly and do not worry about the real possibility the natural resource finish, the State needs to interfere as a way to guarantee an ecologically balanced environment to people and their future generations.

The goal of a balanced environment has been possible through the defense of a sustainable development.

So, a question comes to our mind: what is a balanced environment?

Humbly, it is tried to bring a concept of balanced environment as that where its elements develop themselves and interact with themselves in a natural and harmonic way, where men do not make any changes.

Thus, to have a balanced environment, it is necessary to stimulate the sustainable development, which consists of three development bases: economical, social and environmental protection.

That can be taken from the concept brought by United Nation Conference on Sustainable Development (UNCSD)<sup>28</sup>:

Sustainable development meets the needs of the present without compromising the ability of future generations to meet their own needs. Seen as the guiding principle for long-term global development, sustainable development consists of three pillars: economic development, social development and environmental protection.

Considered as a right of all, those who do not respect this guarantee and with their actions or omissions damage the environment must be responsible for that.

The environmental damage, in Silva's definition<sup>29</sup>, is any change as a result of human activities that direct or indirectly affects the health, security, population's welfare, the social and economical activities, the fauna and flora on a determined region, the aesthetic and sanitary environmental conditions and the environmental resource's quality.

This way, the role of civil responsibility for environmental damage comes out. Making responsible the damagers is very important and that is happening in several Latin America countries, like in Argentina.

It can be stood out a judicial decision about ecological damage<sup>30</sup>:

28 UNCSD2012. **United Nations Conference on Sustainable Development**. 2012. Available in: <<http://www.uncsd2012.org>>. Access in: Sep. 21st 2014.

29 SILVA, Rogério Santana da. **Apostila de Direito Ambiental**. Rio de Janeiro, 2014. p.13. Available in: <<http://www.jurisite.com.br>>. Access in: Oct. 30th 2014.

30 Argentina. Jurisprudencia CC0103 LP215327 RSD-11-95 S 9-2-95. Available in: <<http://todoelderecho.com/Argentina/Jurisprudencia/ambiental.htm>>. Access in: Sep. 27th 2014.

DAÑO ECOLOGICO - INDEMNIZACION. Si como resultado de la decisión judicial han cesado las propagaciones contaminantes bien puede decirse que se ha dado cabal cumplimiento al modo más adecuado de reparar el daño ambiental causado, pues con tal cese (y salvo los vestigios contaminantes que aún puedan perdurar en la atmósfera) se habrían repuesto las cosas (en nuestro caso, el medio ambiente) a su estado anterior, en una típica reparación “in natura”, tal como lo quisiera y mandara el codificador en el art. 1083 del Código Civil. Ello sin perjuicio del resarcimiento por los daños a la persona de los actores y sus bienes. CCI Art. 1083 CC0103 LP 215327 RSD-11-95 S 9-2-95, Juez RONCORONI (SD) Almada, Hugo Néstor c/ COPETRO S.A. y otro s/ Indemnización de daños y perjuicios OBS. DEL FALLO: Se dictó sentencia única juntamente con sus acumuladas: “Irazu, Margarita c/ COPETRO S.A. S/ Indemnización de daños y perjuicios” y “Klaus, Juan Joaquín c/ COPETRO S.A. y otro s/ Indemnización de daños y perjuicios”. MAG. VOTANTES: Roncoroni-Perez Crocco.

The decision above showed us that, although the pollution had been interrupted, the environmental damage repairing must occur, according to article 1.083 of the Argentinean Civil Code.

Other important Argentinean decision is one that was based on the Nation Constitution<sup>31</sup>:

AMPARO. LEGITIMACION. ACTIVA. MEDIO AMBIENTE. ARTS. 41 Y 43 DE LA C.N. Resulta procedente la legitimación activa del actor -vecino de la Provincia de Buenos Aires- en la acción de amparo en donde solicita la nulidad del llamado a licitación para la construcción de una planta de residuos peligrosos (ley 24.051) al haber consagrado expresamente la C.N. que todos los habitantes gozan del derecho a un ambiente sano, equilibrado y apto para el desarrollo humano y para que las actividades productivas satisfagan las necesidades presentes sin comprometer las de las generaciones futuras; y tienen el deber de preservarlo (art. 41 C.N.) consagrando una protección procesal especial para ese nuevo derecho así consagrado, mediante la acción de amparo, que según el art. 43 de la C.N., cuando se trata de la protección de los derechos relativos al ambiente, la acción podrá ser interpuesta por el afectado. # C.NAC. CONT.ADM.FED., SALA III Mo., Mu. y A. “SCHRODER, Juan c/ E.N. (Secr. de Recursos Naturales) s/ AMPARO” 08/09/94 C.N., ART. 41 C.N., ART. 43 LEY 16.986.

In Brazil, the environmental law and the environmental damage responsibility matter is also on a very advanced level.

<sup>31</sup> Argentina. Jurisprudencia C.NC. CONT.ADM.FED, Sala III Mo. Mu. S 8-9-94. Available in: <<http://todoelderecho.com/Argentina/Jurisprudencia/ambiental.htm>>. Access in: Sep. 27th 2014

In addition, it is possible to stand out the Rio Grande do Sul State's Justice Tribune jurisprudence about environmental objective responsibility<sup>32</sup>:

APELAÇÃO CÍVEL. AÇÃO CIVIL PÚBLICA. PROTEÇÃO AO MEIO AMBIENTE. ATERRAMENTO DE ÁREA DE PRESERVAÇÃO PERMANENTE (BANHADO). DANO AMBIENTAL. **O meio ambiente ecologicamente equilibrado é direito de todos, protegido pela Constituição Federal**, cujo art. 225 o considera bem de uso comum do povo. A responsabilidade pelo dano ambiental é objetiva, nos termos do **art. 14 da Lei n. 6.938/81, bastando, para a apuração do ilícito, a prova do fato e o nexo de causalidade entre este e o autor**. Na espécie, um laudo firmado por profissionais dá conta que a área onde era realizada a terraplenagem não é de banhado, contudo, houve aterramento, sem licença, em área de preservação permanente. Obrigação de recuperar a área. Exclusão da multa. Apelação parcialmente provida. (Grifei)

Moreover, another Brazilian decision can be verified, where the environmental damage responsibility due to the lack of environmental preservation, emphasizing the balanced environment right matter.

It has been discussed a lot about the responsibility principle, as Silva<sup>33</sup> teaches, it is the principle in which it is defended that the polluter must be responsible for his actions or omissions to the detriment of the environment, and this way, opposite acts to the environment will be demotivated and, finally, the obligation to recompose the damages will be guaranteed.

Therefore, at any private or public organization, the Environmental Law must awake the aim at a better environmental quality services, products and job environment. They must aim at better practices and this way do not damage or damage the minimum, including this goal from the production to the residual destination.

#### 4. An interesting reducing proposal

The goal of any proposal brought here is how a bigger internal impact inside the countries all over the world about the need of environmental preservation can be generated and how to make that the most polluters – the United States and China – can reduce the injuries caused to the environment.

<sup>32</sup>Brasil. Apelação Cível Nº 70059188169, Vigésima Primeira Câmara Cível, Tribunal de Justiça do RS, Relator: Marco Aurélio Heinz, Juzgado en 04/06/2014. Available in: <<http://www.tjrs.jus.br>>. Access in: Sep. 21st 2014.

<sup>33</sup>SILVA, Rogério Santana da. **Apostila de Direito Ambiental**. Rio de Janeiro, 2014. p.13. Available in: <<http://www.jurisite.com.br>>. Access in: Oct. 30th. 2014.

Brummer<sup>34</sup> suggests a serious, strict and obligatory International Deal to all the countries on environment protection.

However, today the environmental education policy is responsibility of each country. So, it is necessary to change the intervention way in order to influence the United States and China to an effective damage reduction they have caused to our planet. The International Deal suggested was not even in paper, just because these two countries would never agree with any proposal and as consequence would never ratify anything.

Bobbio<sup>35</sup> once affirmed that is function of the human intelligence to conduct the historic process thinking about the benefit of everybody, and this includes the big environmental concerns of today world, that are global and for this reason, “*demand universal solutions, enhanced not only by the solidarity from the rich to the poor of the world system, but also, by the solidarity from present generations to the future ones*”.

The suggestion here is a proposal of international mobilization and the creation of a document where all the countries must ratify it, promising to create internal laws with a strict punishment to the polluter companies through the civil responsibility by environmental damage corresponding to fifty percent of their profitability. This way, State leaders all over the world must be present and setting up a unique moment where the two biggest polluters must ratify the document. So, China and the United States would have to ratify without excuses. Other countries with no strict environmental laws must pass to create or change them, giving a short time to do that. It is not a sovereignty matter, but a universal matter. Perhaps the compromising with the sustainable development would be bigger when the companies' profitability that moves countries economy would be affect a lot.

In addition, the matter would need to be connected, at any way, to an international law obligation contract, prescribing tickets and the creation of another fund, where the damager countries must deposit an amount every time they do not accomplish it. More, this ticket could be calculated based on Gross National Product (GNP) of each country, as a way to stop the pollution, and with a so high percentage that no other alternative to the damager country is left that reducing the pollution emission.

In this sense of the Environmental Law be a universal matter Führer<sup>36</sup> teaches that the environmental protection is very important just because there are

34 Brümmer, Simone. **Histórico dos movimentos internacionais de proteção ao meio ambiente**. Jus Navigandi: Teresina, 2010. Available in: <<http://jus.com.br/artigos/18162>>. Access in: Sep. 29th 2014.

35 Bobbio, Norberto. **Era dos Direitos**. Rio de Janeiro: Campus, 1992. p.6.

36 Führer, Maximilianus C. A.; MILARÉ, Édis. **Manual de Direito Público e Privado**. 17. ed. São Paulo: RT, 2009, p. 315.

collective interests, in which the protection of this right is not only an obligation of an exclusive person, because this protection is spread about all the society and on each one of its members.

## Final conclusions

Spite of being recent, it can not be ignored the humanity fight, along these years to reach out the right to have a balanced environment without making the countries stop their economical development. For this reason, the sustainable development was thought. So, the penalties from the environmental damage civil responsibility must be understood as maximum priority in order to not lose years of fight and conquest. Face the disordered usage, the responsibility must always exists as a punishment way and to force a awareness for the universal need to preserve the planet we live under the sentence of not having the human existence possibility in a near future.

## Bibliography

Araújo, Thiago Cássio D'Ávila. **Principais marcos históricos mundiais da educação ambiental**. Ambiente Brasil, 2007. Available in: <<http://www.noticias.ambientebrasil.com.br>>. Access in: Sep. 30th 2014.

Argentina. Jurisprudencia CC0103 LP 215327 RSD-11-95 S 9-2-95. Available in: <<http://todoelderecho.com/Argentina/Jurisprudencia/ambiental.htm>>. Access in: Sep. 27th 2014.

\_\_\_\_\_. Jurisprudencia C.NC. CONT.ADM.FED, Sala III Mo. Mu. S 8-9-94. Available in: <<http://todoelderecho.com/Argentina/Jurisprudencia/ambiental.htm>>. Access in: Sep. 27th 2014.

Barros, Wellington Pacheco. *Curso de direito ambiental*. 2. ed. São Paulo: Atlas, 2008.

Bobbio, Norberto. **Era dos Direitos**. Rio de Janeiro: Campus, 1992.

Brañes, Raúl. **Informe sobre el desarrollo del derecho ambiental latinoamericano**. México: PNUMA, 2001.

Brasil. Constituição Federal de 1988. Available in: <<http://www.planalto.gov.br>>. Access in: Sep. 10th 2014.

Brasil. Apelação Cível Nº 70059188169, Vigésima Primeira Câmara Cível, Tribunal de Justiça do RS, Relator: Marco Aurélio Heinz, Julgado em 04/06/2014. Available in: <<http://www.tjrs.jus.br>>. Access in: Sep. 21st 2014.

\_\_\_\_\_. Lei n. 6.938, de 1981. Available in: <<http://www.planalto.gov.br>>. Access in: Sep. 30th 2014.

\_\_\_\_\_. Secretaria de Articulação Institucional e Cidadania Ambiental. **Agenda 21**. Available in: <<http://mma.gov.br/agenda21>>. Access in: Sep. 20th 2014.



Brümmer, Simone. **Histórico dos movimentos internacionais de proteção ao meio ambiente**. Jus Navigandi: Teresina, 2010. Available in: <<http://jus.com.br/artigos/18162>>. Access in: Sep. 29th 2014.

Canotilho, José Joaquim Gomes. **Introdução ao Direito do Ambiente**. Universidade Aberta, 1998.

\_\_\_\_\_. **El concepto de medio ambiente**. Manual de Legislación Ambiental: Lima, 2014. Available in: <<http://www.legislacionambientalspda.org.pe>>. Access in: Sep. 30th 2014.

Führer, Maximilianus C. A.; Milaré, Édis. **Manual de Direito Público e Privado**. 17. ed. São Paulo: RT, 2009.

Leite, José Rubens Morato. **Dano ambiental: do individual ao coletivo extrapatrimonial**. São Paulo: RT, 2000.

Oliveira, Marcela Matos Fernandes de; Monteiro, Márcio Augusto Ferreira. **O poder público e a preservação do meio ambiente**. Jus Navigandi: Teresina, 2014. Available in: <<http://jus.com.br/artigos/30304>>. Access in: Sep. 29th 2014.

ONU Br Nações Unidas no Brasil. **A ONU e o meio ambiente**. 2014. Available in: <<http://www.onu.org.br>>. Access in: Sep.19th 2014.

Queiroz, André. **Direito Ambiental**. Supremo Tribunal Federal, 2014. Available in: <<http://www.stf.jus.br>>. Access in: Sep. 10th 2014.

Sarlet, Ingo Wolfgang; Fensterseifer, Tiago. **Direito Constitucional Ambiental: constituição, direitos fundamentais e proteção do ambiente**. 3. ed. São Paulo: Editora Revista dos Tribunais, 2013.

SILVA, Rogério Santana da. **Apostila de Direito Ambiental**. Rio de Janeiro, 2014. Available in: <<http://www.jurisite.com.br>>. Access in: Oct. 30th 2014.

Silva, Solange Teles da. **A ONU e a proteção do meio ambiente**. In: Mercadante, Araminta; Magalhães, José Carlos de (orgs.). **Reflexões sobre os 60 anos da ONU**. Ijuí: Unijuí, 2005.

UNCSD. **United Nations Conference on Sustainable Development**. 2012. Available in: <<http://www.uncsd2012.org>>. Access in: Sep. 21st. 2014.

UNEP. **Declaration of the United Nations Conference on the Human Environment**. Available in: <<http://www.unep.org>>. Access in: Sep. 28th 2014.

