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ENVIRONMENTALLY DISPLACED PERSONS AND THE POLLUTER-PAYER PRINCIPLE

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I. Introduction

The agreement coming out of the COP-21 negotiations gave breakthrough recognition to the concept of “loss and damage,” sorting through thorny discussions and politically charged negotiating positions. These positions revolved around liability and compensation, which developing countries called for but developed countries were unwilling to have included in the agreement.

“Umbrella Group,” an informal collection of non-EU developed

countries including the United States, that suggested deleting all mention of loss and damage. In the goal of achieving a comprehensive global agreement, for the United States government, the concept of incorporating liability and compensation into any agreement is a red line. The United States—stating glaringly that Article 8 of the Agreement “does not involve or provide any basis for any liability or compensation.” This definitive language was included to assuage the concerns of major polluters.

A system of supporting the capacity to cope requires more than cash. Technology transfers, capacity building, and access to sophisticated planning tools are part of a spectrum of support that will build resilience in the most vulnerable countries. These, along with the concept of common but differentiated responsibility for mitigation, could potentially be methods of addressing loss and damage with or without a system of liability and compensation. It is not clear that parties have given up rights to compensation under recognized international law norms in particular, the polluter pays principle. It seems that parties maybe diverted concept of common but differentiated responsibility. But the Paris Agreement was an historic

agreement, but that future generations will judge it based on what is done moving forward. So we have to maintain the polluter pays principle in the base of principle of non regression. We'll analyse the relations of the concept of common but differentiated responsibility and the polluter pays principle.

II. The polluter pays principle

The polluter-pays principle is an economic principle of the environment resulting from the ethics of responsibility, which consists in having each economic actor take into account the negative externalities of its activity.

The measures stemming from the polluter-pays principle aim at restoring "price truth": if an economic activity causes pollution, the cost of this pollution (borne by the community) must be taken into account at the level of the polluter. The polluter therefore integrates in his economic choice all the costs related to his production (private costs and external costs).

The polluter pays principle, as an economic principle, aims at the assumption of responsibility by the polluter of the "costs of the measures of prevention and fight against pollution decided by the public authorities so that the environment is in an acceptable state.¹

This principle is one of the basic principles that underpin environmental policies in developed countries. It is at the origin of the internationalisation of the pollution costs, by the authors of the pollution, by means of regulatory instruments (norms, prohibitions, permits, zonings, quotas, restrictions of use and other direct regulations), economic instruments (fees, subsidies, deposit schemes, market creation, compliance incentives), or fiscal instruments².

In order to limit environmental damage, the polluter-pays principle tends to attribute to the polluter the expenses relating to the prevention or the reduction of the pollution of which he could be the author. The application of this principle aims to anticipate damage and to set a rule for attributing the cost of measures to the environment.

¹ Arthur Cecil Pigou (1877-1959) [archive] on <http://www.alternatives-economiques.fr> [archive], Alternatives Economiques, November 2005

² Aurore Moroncini, Environmental Business Strategy: Context, Typology and Implementation, 1998, PPUR Polytechnic Presses, 191 p. (ISBN 9782880743895)

The external costs of pollution on the environment are taken into account in the production of costs of the economic agents. The polluter must pay the expenses relating to the prevention or the fight against pollution. The prices of products or services must reflect the economic reality of pollution costs, in order to favor non-polluting activities.

III. Analyzes of common but differentiated responsibilities and according to the respective capacities of the States Parties, including in matters of reception

A) Common responsibilities

If the responsibility towards the environmentally displaced persons is that of the whole humanity, common and universal, to respect a collective good³.

³ John Paul II, Encycl. Centesimus annus, 40 (1991)

For everyone, the term "common responsibility" plays a role in abstracting responsibility and inducing a "dilution of responsibilities that diminishes the responsibilities of industrialized countries, while most environmentally displaced persons are innocent victims of forced displacement. Perhaps this would be the common responsibility now, but it is still the responsibility of each and every one of them.

If the land is a collective good, all individuals being co-owners of the land, it is necessary to look for the author who caused the damage to the land, the polluter who will pay the compensation to compensate a damage to the property. In this case, the responsibility is not common and lies with the polluters. Industrialized countries account for 78% of greenhouse gas emissions in the atmosphere, although they account for only 15.5% of the world's population. So the ambiguous expression of "common responsibility" is not appropriate. We must look for each person responsible for environmental movements. Rather, it is "differentiated responsibilities" rather than "common but differentiated responsibilities". The principle of common but differentiated responsibilities is a principle of diplomatic compromise, not a principle based on reality as the Article 8 of the Paris Agreement.

B) Differentiated responsibilities

Common but differentiated responsibilities have their basis in historical responsibility. They blame the industrialized countries for taking charge of environmental displacement. Yet, in 2018, China is ranked first in the world list of CO₂ emissions, United States in the second, India in the third.

In the global list of accumulated amounts of CO₂ emissions between 1990-2018, the period of rising global warming problems, China is leading.

On the other hand, the principle of common and differentiated responsibilities establishes a direct link between development and the environment. but the problems of the displaced persons are not directly related to economic development. The main concerns of the environmentally displaced persons are those of men's rights. And human rights in the environment raise moral, social, political, and

economic issues. To solve all these complicated questions, first, it is necessary to determine the author who caused environmental displacements. It is rather the polluter-pays principle than the principle of common but differentiated responsibilities. Because the adjustment of responsibilities is only a problem that comes next. So the meaning of "common but differentiated responsibilities" is not the same as environmental displacement as it is for other environmental problems.

And the responsibility is not only historical, but also topical. The sharing of responsibilities is not equal for everyone according to the level of technology, finance, space, etc. Thus, the equitable sharing of responsibility between industrialized and developing countries is at stake, including in particular countries whose speed of industrialization is extremely rapid. Above all, it is important to remember that the goal of equitable sharing is not to encourage developing countries to continue their growth.

Thus, the content of the responsibilities will be first of all the responsibility of the prevention of migrations, then that of the return of the environmentally displaced persons and finally that of the

reception of the displaced persons. So the responsibility for preventing migration would not be those differentiated. The responsibility for prevention is primarily concerned with the polluter pays principle.⁴

B) Depending on the respective capacities of the States Parties

First, the criteria for measuring the respective capacities of the States Parties are diverse: Finance, GNP, GNI, HDI (Human Development Index), level of technology, capacity to receive the displaced persons, etc.

Because of this diversity of criteria, it is still questionable in allocating the price of environmental movements or quota of environmentally displaced persons.

Secondly, the direct responsibility of enterprises, especially that of

⁴ Directive 2004/35 / EC of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage establishes an environmental responsibility framework based on the "polluter pays" principle to prevent and repair environmental damage as the principle of common but differentiated responsibilities.

multinational enterprises, is excluded from the responsibility of environmentally displaced persons, despite their sometimes more direct and serious responsibilities than those of States. Normally they are more direct provocateurs of environmental shifts.

C) With regard to reception

The price of environmental travel and the hosting of environmentally displaced people are different issues. They must be treated separately.

The duty to host environmentally displaced persons is independent of the contribution of countries to climate change.⁵ Rather, it is a common responsibility than the polluter-pays principle. States' respective reception capacities vary according to their economic, social, geographical, topographical and neighborhood conditions.

IV. proposals

The polluter pays principle could apply to the financing of the

⁵ Martin Provencher, "Migration and climate justice", Feb. 5, 2011 Share

Environmental Displacement Fund.

However, this principle must be applied not only to States but also to companies. Considering the heavy responsibility of companies regarding the change of technological disasters causing environmental shifts, it is necessary to demand the application of the responsibility of companies according to the polluter-pays principle. Thus, it is necessary for all the countries to adopt the system of polluters "taxes", "in common with the companies that caused and cause environmental displacement to finance the cost of environmental travel.

The right to information and participation in the environment is very important in order to prevent massive displacement. Yet, too often governments and businesses prevent us from telling the truth, as we have seen in the Chernobyl and Fukushima accidents. Therefore, it is necessary to introduce the polluter-pays principle in the face of the harmful results of these activities of prevention caused by the absence of an immediate communication of the information.

The basis of hosting environmentally displaced persons by neighboring countries and foreign countries is on the principle of solidarity and the principle of humanity. It is not a question here of responsibility according to the polluter pays principle. It is rather a common responsibility. So we have to share the reception charge and allocate reception quotas according to the need for immigration and the capacity to deal with this immigration from each country. For neighboring countries, the duty of reception would be higher than for the other countries, by interdependent communal relations of proximity. However, in order to further discourage greenhouse gas emissions, it is necessary to add the host principle in proportion to the greenhouse gas emissions of the host country.