

TRIBUTE

ITZCHAK KORNFELD*

A Tribute to Professor Svitlana Kravchenko

“[T]he structures of power were not built over night and they will not be overthrown in one night.”¹

This symposium edition of the Oregon Review of International Law is dedicated to the memory of Professor Svitlana Kravchenko, a lawyer, teacher, and scholar. It emanates from the Review’s co-sponsorship of a symposium inspired by Svitlana Kravchenko, entitled “New Directions for Human Rights and the Environment,” which was held at the Knight Law School, in Eugene, over two days, September 28–29, 2012. I am honored to have been asked to draft the dedication for this volume, and I would like to express my thanks and appreciation to the Board of Editors, particularly to the Editor-in-Chief, Kent Davis, for allowing me the high honor of doing so.

I had the great pleasure and *privilege* of knowing Professor Svitlana Kravchenko, having first met her, if memory does not fail me, in 2004 or 2005. What initially struck me about her were her humanity and graciousness, both embodied in her smile and the twinkle in her eyes. The latter could neither be missed nor ignored. One could sense that one was meeting a truly wonderful and good person. And over the years, Svitlana did not disappoint. We are all the poorer for having lost her at such a young age.

Of course, once I got to know Svitlana better, I realized that she also cared deeply about people, and about the many ways she sought

* Giordano Fellow, Faculty of Law, The Hebrew University of Jerusalem. Currently, Jean & Bluette Nordmann Foundation Visiting Scholar, University of Fribourg, Fribourg, Switzerland. Kornfeld.itzchak@mail.huji.ac.il.

¹ Natasha Vargas-Cooper, *Room for Debate: Only Strong Organization Make Protests Work*, N.Y. TIMES, Aug. 20, 2012, <http://www.nytimes.com/roomfordebate/2012/08/20/what-makes-protest-effective/only-strong-organizatons-make-protests-work>.

to utilize her chosen vocation and avocation, the law, in helping the downtrodden, first in her native Ukraine and then globally. (More on her efforts below.) Although we did not speak much about the subject of the nuclear disaster in Chernobyl (termed in Ukrainian, the *Chornobylska Katastrofa* or *Chornobyl Catastrophe*) which occurred on April 26, 1986,² I believe it had a profound impact on her. How could it not have? Indeed, she was a preeminent environmental scholar, one of the very few, in her native Ukraine. But, following that disaster she threw herself into work that went far beyond the classroom. Moreover, at considerable risk to herself from the Soviet Government, Svitlana also became a champion of governmental “sunshine.” Those of us who lived outside the Soviet Union at the time of Chernobyl remember well how “coy” the Russian Government was about allowing information to “filter out” to the outside world—and it did so only under pressure from European governments, who were concerned about their citizens’ safety. But, if people in the Ukraine or in the other affected Republics were told anything, or how much they were told, one does not have a sense that they learned the truth at the time of the disaster, or for some time afterwards.

But, one thing is certain, once the United Nations Economic Commission for Europe (“UNECE”) Convention on Environmental Impact Assessment in a Transboundary Context, also known as the Espoo Convention, was agreed upon in 1991, she became an ardent advocate for its adoption by Ukraine. Likewise, in 1998, when the Aarhus Convention, more formally known as the United Nations

² The Chernobyl disaster occurred at the Chernobyl Nuclear Power Plant in the then Ukrainian Soviet Socialist Republic. The plant was operated and controlled by the central authorities in the Soviet Union. The catastrophe was initiated by an explosion in one of the reactors, which resulted in a fire that released huge quantities of radioactive contamination into the atmosphere, spreading across the bulk of the western portion of the Union of Soviet Socialist Republic, and the European continent. See W. SCOTT INGRAM & SCOTT INGRAM, *THE CHERNOBYL NUCLEAR DISASTER (ENVIRONMENTAL DISASTERS (FACTS ON FILE))* (2005); Daniel Dumas, *This Day in Tech: April 26, 1986: Chernobyl Nuclear Plant Suffers Cataclysmic Meltdown*, WIRED, Apr. 26, 2010, <http://www.wired.com/thisdayintech/2010/04/0426chernobyl-nuclear-reactor-meltdown>.

Chernobyl is deemed to be the worst nuclear power meltdown in history, and is regarded as a level seven, or “Major” event, the most severe, causing “[w]idespread health and environmental effects [an] [e]xternal release of a significant fraction of reactor core inventory,” on the International Nuclear and Radiological Event Scale (INES). INTERNATIONAL ATOMIC ENERGY AGENCY, INTERNATIONAL NUCLEAR EVENT SCALE, app. I-VII, available at <http://www.iaea.org/ns/tutorials/regcontrol/appendix/app96.htm>. The scale was introduced in 1990 by the International Atomic Energy Agency (“IAEA”) in order to facilitate immediate communication regarding safety related information caused by nuclear reactor accidents. *Id.*

Economic Commission for Europe (“UNECE”) Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, was open for signature, Professor Kravchenko was at the forefront in attempting to have Ukraine become a member. She also worked tirelessly as a “citizen diplomat” in the international negotiation of the Aarhus Convention.

Svitlana became deeply involved in the reform of public policy and spoke widely on environmental and climate law. She also served for a decade as the elected Vice Chair of the Compliance Committee of the Aarhus Convention, a quasi-adjudicative international body. Moreover, Professor Kravchenko was the founder and president of the very first public-interest environmental law firm in Ukraine, Environment-People-Law, cofounder and codirector of the Association of Environmental Law of Central and Eastern Europe, as well as the elected regional governor of the International Council of Environmental Law. Furthermore, she served as a vice chair of the International Union for Conservation of Nature Commission on Environmental Law, as well as serving as an adviser for the Ministry of Environment and the Parliament of Ukraine. She did much of this work as a single mother.

Indeed, Svitlana toiled in fields, touching peoples’ lives, and traveled across the Ukraine, among other locales, to convince politicians, policy makers, and others to allow ordinary persons - the poor, and the uninformed - to have open access to records and to learn about their environmental conditions through support of the Aarhus and Espoo Conventions. And, she bolstered others as they fought, and continue to fight on behalf of the downtrodden in courts. The battles to convince are hard fought.

Sometimes, it feels like one is skiing backwards on ice, and advocates of and for environmental rights, or human rights—today they appear to merge—more often than not fight apathy and ignorance, by policymakers and judges, who think or believe that they have better things to do than to do justice.³ Other policymakers and

³ See, e.g., the oral argument in *Mass. v. Envtl. Prot. Agency*, 549 U.S. 497 (2007), a case where the United States Supreme Court was asked to decide whether carbon dioxide was a pollutant that could be regulated under the Clean Air Act. *Id.* at 532 (discussing 42 U.S.C. § 7521(a)(i) (2007)). During that hearing, Associate Justice Antonin Scalia had the following colloquy with counsel for the State of Massachusetts:

JUSTICE SCALIA: Mr. Milkey, I always thought an air pollutant was something different from a stratospheric pollutant, and your claim here is not that the pollution of what we normally call “air” is endangering health. That isn’t, that isn’t—your

judges are bolder than that, and are unencumbered by the veil of the status quo, which allows them to struggle with vexing problems, always looking forward beyond the mountains of obstacle, in order to do justice.

Justice is done in many ways. One is by teaching others how to achieve justice through use of the law. Thus, one gathers students—and she did, many of them, from across the planet, who she cared for—and who are able to multiply her message and her work. A great sage and judge is quoted as saying that “[t]he world rests on three things: on justice, on Truth, on Peace, as it is written [in Zechariah 8:16] ‘With truth, justice and peace shall you judge in your gates.’”⁴ Although Svitlana Kravchenko did not know about this sage or his words, she made them the tenets of her life.

Indeed, in an expression of these principles, Professor Kravchenko devoted thirty-five years of her career to academia, teaching environmental law for more than twenty-five years at Ukraine’s National University of L’viv prior to moving to the United States. She taught at the University of Oregon School of Law, where her courses included Human Rights and the Environment, International Environmental Law, and Climate Change in International Law. A preeminent scholar, Svitlana was dedicated to research, which resulted in twelve books, and 190 articles and book chapters. Her most recent book, published in 2008, was coauthored with her

assertion is that after the pollutant leaves the air and goes up into the stratosphere it is contributing to global warming.

MR. MILKEY: Respectfully, Your Honor, it is not the stratosphere. It’s the troposphere.

JUSTICE SCALIA: *Troposphere, whatever. I told you before I’m not a scientist.*

JUSTICE SCALIA: *That’s why I don’t want to have to deal with global warming, to tell you the truth.*

Transcript of Oral Argument at 22–23, *Mass. v. Env’tl. Prot. Agency*, 549 U.S. 497 (2007) (No. 05-1120) (emphasis added).

⁴ Rabban Shimon the Elder, son of Gamliel, speaking in Chapter 1, the Talmud Tractate of Avot (known in English as the Ethics of the Fathers). Rabban was a term of honor given to the Chief Rabbi and Chief Justice. Rabban Shimon the Elder, born 10 BCE, died 70 CE, was President of the Great Sanhedrin (Court) located in Jerusalem during the two decades prior to the destruction of the Temple. He was the grandson of Rabbi Hillel the Elder, and although a great scholar, he taught that action on behalf of one’s fellow man is the essence of virtue—action is better than words. Following his own maxim, Rabbi Shimon was one of the leaders in the first revolt against the Romans, and died in battle, attempting to drive them out of Jerusalem.

husband, Professor John Bonine. It is the first book on the subject of human rights and the environment—her passion.⁵

In conclusion, in her quest for justice and truth, Professor Kravchenko sought to spread her message that the law, and the aid of others, need not be cleaved by some antiseptic and artificial boundaries of scholarship, involvement in public policy, or work on treaty compliance. But rather, that each of these efforts merge, and that we should not fear jumping into whatever our passions drive us to do, so long as we do for others. She left us a great deal, a legacy of touching ours and many others' lives. And as a tribute to her, the editors continue Professor Kravchenko's work by publishing this volume.

⁵ SVITLANA KRAVCHENKO & JOHN BONINE, *HUMAN RIGHTS AND THE ENVIRONMENT: CASES, LAW AND POLICY* (2008).

