

ENVIRONMENT COMMITTEE - *November 2015*

## INCREASING THE EFFECTIVENESS OF INTERNATIONAL ENVIRONMENTAL LAW

### *Duties of States, rights of individuals*

In the run up to the Paris Conference in December 2015, the COP21<sup>1</sup>, negotiators are working towards the adoption of a new international agreement on climate change. In order to protect the environment, norms must indeed be adopted at an international level : **the ecological crisis does not stop at State borders**. Ecological territories have different boundaries to those of national jurisdictions.

International environmental law is, however, marked by a **double failing** : inefficiency in the **drafting process** of norms because of the inertia, or even paralysis, in negotiations and difficulties in **enforcement** due to the lack of compliance mechanisms and effective sanctions.

**In order to make international environmental law more effective, civil society must take ownership of it. State compliance with treaties must become the business of all citizens so as to ensure respect for the right to a healthy environment, which has been established by numerous national constitutions.**

It is therefore necessary to explicitly establish, in the *rules* of international law, the role pertaining to civil society. Civil society should be given **rights and guarantees** at every stage of the process.

#### **DRAFTING OF INTERNATIONAL NORMS : PROCEDURAL GUARANTEES**

In practice, civil society plays an important role in environmental negotiations. During the 1992 Rio Conference, more than 20,000 NGO representatives were in attendance. For COP21, specific areas have been reserved for non-state actors : NGOs, companies and regional collectives.

Yet, the law lags behind practice. The principle of public participation is of course established by certain international treaties, such as the Aarhus Convention, but only, and paradoxically, for the drafting of *national* laws. Furthermore, different international fora allow varying levels of public participation.

The requirement for participatory democracy must be transposed to international law. **The institutionalisation of civil society's role would allow such initiatives to endure and be strengthened by this added legitimacy.** It is proposed in particular to :

- Implement a **citizens' initiative** and a **universal right to petition** international institutions
- Adopt an **international convention on public participation in the drafting of international environmental law**, inspired by the Almaty Guidelines. This would gather together and delineate the fundamental principles of this field : public participation, the right to information held by international organisations and even rules for NGO accreditation.

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<sup>1</sup> The 21<sup>st</sup> Conference of the Parties to the United Nations Framework Convention on Climate Change (UNFCCC).

## APPLYING INTERNATIONAL NORMS : JUDICIAL GUARANTEES

The existence of practical compliance mechanisms and sanctions is a mandatory condition for the effectiveness of a rule. **A law without binding force is not a law.** Several bodies are capable of examining the compliance of a State with its international environmental commitments ; however, numerous problems persist.

- Environmental agreements sometimes contain provisions for **non-judicial compliance committees** which have limited powers. Improvements are possible :

- **Recourse to these bodies**, which are almost exclusively reserved to States, **should be extended to NGOs based on the model of the Aarhus Convention.**

- The Paris Conference provides an excellent opportunity to establish a new, more transparent and more open compliance procedure.

- International jurisdiction remains optional and non-state actors do not have any standing before international courts. **Furthermore, France numbers among those States that do not accept the compulsory jurisdiction of the International Court of Justice**, which is particularly deplorable for the host country of the COP21.

- **The compulsory jurisdiction of the International Court of Justice** should be recognised by the larger States.

- A right of intervention, or even a **genuine right of recourse could be established for certain groups of non-governmental actors** in order to monitor the effectiveness of an environmental agreement.

- Considerations underway **on the creation of a specialised court for environmental issues and a global environmental organisation** must continue.

- **National judges ought to assume the role of an international justice of general law so as to become the primary guarantor of the State's compliance with its international commitments.** This function is powerfully illustrated by a Dutch national court at The Hague which, in a decision given on 24 June 2015, ordered the Dutch State to reduce its greenhouse gas emissions in accordance with its duty to protect the environment.

- **Environmental agreements should include a chapter specifically dealing with the issue of the right to recourse** and more particularly with the ability to invoke the convention before national courts.

## CONTENTS OF INTERNATIONAL NORMS : WRITTEN GUARANTEES

A major characteristic of international environmental law is its profusion of norms. We have counted more than 500 treaties more or less directly related to the environment. Improving the quality and accessibility of these norms requires the **listing and reordering** of multilateral environmental agreements. Subsequently, the **codification** of the norms could be devised.

Above all, **a universal text with binding force which amalgamates all of the founding principles of international environmental law would provide this law with the corner stone it needs.**

- The Committee therefore proposes the adoption of a **Universal Environmental Charter** that would have, unlike the existing declarations, **binding legal force. This Charter would supplement, unify and form the basis of international environmental law.**

- The text would comprise **material and procedural rights** and the surveillance of compliance with those rights would be ensured through the **creation of a compliance committee** and the inclusion of a chapter dedicated to the **right of recourse** thereby guaranteeing the enforceability of the Charter by national courts.

The international environmental law of tomorrow would rest on three pillars : **the Universal Charter, the International Court and the World Environment Organisation.**

**[Report available on November 17<sup>th</sup> on our website : www.leclubdesjuristes.com](http://www.leclubdesjuristes.com)**