

COP 21: "To arms, citizens, to defend your rights!"

What are international treaties actually worth? ... When individuals sign contracts, they take the risk that they may not honour them. But can a State be forced to meet its commitments?

This is a relevant question to ask on the eve of the COP21, when States are meeting together to reach an agreement on climate change.

"To arms, citizens, to defend your rights!" is the answer suggested in substance by the report entitled, *"Strengthening the effectiveness of international environmental law"*¹.

This report has been drawn up by the *Club des Juristes'* Environment Commission, which I have the pleasure of coordinating. This Commission brings together academics, judges and lawyers, with it being no exaggeration to say that they are among the top specialists in environmental law in France.

The observation is clear: due to a lack of control mechanisms and effective sanctions, States may deliberately choose not to respect the treaties they have signed.

Take Canada, for example, which in 2011 realised it would not be able to reach the targets set by the Kyoto protocol. Instead of reducing its greenhouse gas emissions by 28%, it had increased them by 6%. No worries... To avoid sanctions, the country implemented a very simple solution, namely deciding unilaterally to withdraw from the Kyoto protocol!

This is because international law is based on a fundamental principle, namely the sovereignty of States. If this principle is conceived in overly absolute terms, it will hinder the progress of international environmental law. It is at the origin of two series of difficulties.

The first difficulty involves the negotiation of treaties: a State is only subject to international law if it chooses, in its sovereign capacity, to accede to a treaty. This is the key difference between States and individuals, whose consent is not sought before imposing legislation...

This is how the United States failed to ratify both the 1992 Rio Convention on biological diversity and the 1997 Kyoto protocol. This resistance by certain States is harmful, as the ecological crisis requires all concerned countries to rally together. To fight climate change or the extinction of endangered species, it is obvious that legal norms need to be adopted on a global scale.

This is why citizens play a key role. From the negotiation stage onwards, they need to put pressure on political leaders to ensure they sign and then ratify ambitious international agreements. The Environment Commission report proposes the introduction of a **citizens' right of initiative** on a global scale. It also aims to establish the **place of civil society in international negotiations**. The principal of public participation, which already exists in national law, should be enshrined for the negotiation of international norms.

¹ *"Renforcer l'efficacité du droit international de l'environnement"* available on the *Club des Juristes* website: www.clubdesjuristes.com

Non-State players, such as NGOs, businesses and regional authorities, play a major role which should be better recognised by law. The adoption of environmental treaties should not be left solely in the hands of diplomats. Citizens have a voice. We should create instruments for participative democracy on an international level. It will then be the role of civil society to appropriate them.

The second difficulty concerns the application of treaties: the mechanisms for control and sanction are inefficient. International justice is optional and subsequently, several States, including France and the United States, have chosen not to recognise the compulsory jurisdiction of the International Court of Justice, but rather acknowledge it on a case-by-case basis, for specific disputes. The report invites France to agree to submit to this jurisdiction, joining the majority of major European countries, including Germany, the UK and Italy. In addition, it proposes granting NGOs a **right of intervention before the International Court of Justice** to submit their comments.

To ensure States comply with their international commitments, citizens should be able to **refer cases to the court** in the event of commitment failures. Civil society plays an essential monitoring role. A good example of this can be seen in a recent ruling handed down by a court of The Hague. On 29 June 2015, in response to a case brought by 900 citizens forming an NGO, the court ordered the Dutch government to reduce greenhouse gas emissions in order to comply with its international commitments.

Lastly, the report sets out an ambitious proposal, considering time has come to adopt a "**Universal Environmental Charter**". This would involve setting the key founding principles in the stone of international law, including the right of each person to a healthy environment. This is a fundamental human right, which would give rise to a series of ensuing rights, including the right for citizens to bring cases to court to force States to respect their international commitments. It would also lead to a series of consequential rights, such as the right to information or public participation, which should be included in the Charter.

This new generation of human rights must be enshrined in a treaty which all States must respect. The only texts in existence today, on an international scale, are simple declarations, such as the "Rio Declaration", which has no legal force. Such texts cannot be invoked in court.

In 1966, nearly 50 years ago, two "International Pacts" were signed within the framework of the UN - one to enshrine civil and political rights, and the other, economic, social and cultural rights.

This diptych should now be completed by a Universal Environmental Charter, so that this text serves as a constant reminder for both citizens and States of their rights and duties to protect the planet.

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