COURSE REVIEW OF ENVIRONMENTAL LAW

KOYEU TATOU EMMANUEL[1], ANJAH GRACE MENDI[1], TCHAMAGO FRANCOIS XAVIER[2] FRANKLIN VALCIN[3] AND LINDA COLLAZO[3]

[1] Department of Biology, University of Dschang, P.O.BOX 67, Dschang, Cameroon

[2] Department of Biology, University of Yaoundé, P.O.BOX 8083, Yaoundé, Cameroon

[3] Department of Agricultural science of Atlantic International University, Pioncer plaza 900 Fort Street-40,Honolulu, Hawaii 96813

Corresponding author:E-mail:koyeu00@yahoo.fr

ABSTRACT

The right of the environment is a well -built expression of a new politics put in place from 1960 S. It is all about the realization of the limited aspects of natural resources as well as negative effects of pollution of all sorts resulting from the production of goods and their consumption. That specific right derived more or less directly from international debates on the environment, during some important world conferences, has been the object of a transposition in the national elections of States, notably through the constitutionality and the adoption of both legislative and statutory acts, on a threefold plan of supervision, of protection and sanctions.

INTRODUCTION

International environmental law is the body of rules relative to environmental law. Its objective is the environment. Neither the environment nor the laws on environment are separate statements. The term environment is disputable. According to article 1 of the pact on the environment, it is defined as a constituting "nature, comprising of natural resources, cultural heritage and urban infrastructure indispensable to socio-economic activities".

This definition brings together natural environment and natural resources, most especially cultures and its content. More still, environment encompasses infrastructure, indispensable

for socio-economic development. Though not mentioned in the definition man appears to be part of the environment.

This definition presents some advantages as it considers environment in its diversity. It was criticized for its extension as well as its omission of other constitutive elements and its disagreement with the problem of sustainable development.

The second conception does well to correct these shortcomings. That is why Pr. Maurice Kamt says environment takes the form of "the place, all form of nature and its resources, comprising of cultural heritage, and human resources indispensable for socio-economic activities and a good wellbeing." This definition surpasses the previous one. By referring to nature, natural resources, economic infrastructure, culture, it attaches itself to what is called "the framework of life", which is very important as it brings to play important themes on environment such as protection of the environment and sustainable development.

No matter the stand we take, all conceptions on environment must be consecrated on two distinct but complementary elements; the composition of the environment and the structuring concept of the environment. The composition of the environment depends on nature and comprises of animal and plant species, air, water, and soil and by extension cultural heritage, human infrastructure etc. Concerning structuring concepts, they are connected to fundamental principles related to the environment.

There is no separation between nature, infrastructure and cultural heritage; instead we talk of complementarities between life and nature. It is in this connection that the charter of the United Nations general assembly adopted in October 23rd 1982 disposes "humanity forms and integral part of nature and life depends on the uninterrupted functioning of natural systems, which are the sources of energy and nutrition". The charter equally indicates that "each lifestyle id unique and deserves respect irrespective of its value to man".

The international community had time to stress this I the declaration of Rio de Janeiro in June 14 1992. The preamble is instructive "the earth, home of humanity constitutes a whole and its interdependence". Fundamentally, the interdependence of life and nature is to consider the necessity to protect the environment. This is why the charter on nature makes it an obligation to humanity. "The conservation of natural resources which are of unestimable socio-economic, scientific, educative, cultural, recreative and esthetic". On its part, the Rio declaration precise that it is in the interest of all to work for the protection of the integrity of world environmental system and development.

Finally, the convention of 1992 on biodiversity associates "the preservation of peace in the world to the good conservation of sustainable rise of biodiversity". It calls on calls on states, international organization, NGOs and individuals to respect these biodiversities .

We distinguish internal or national and international environmental law. Conforming to the charter of the UN and international public law principles, "states pose the sovereign rights to

exploit their natural resources in accordance with their environmental policies and have the obligation to ensure that activities carried within the limits of their jurisdiction or control doesn't cause damage to the environments of other states or regions belonging to no national jurisdiction". It is for this reason that states design legal norms relative to the environment within the triple plan of surveillance, protection and sanction. More still, national regulations embrace aspects of biodiversity as forest, pollution, fishing, etc. In brief, the existence of an internal environmental law is largely solicited. This is placed under the control and supervision of international environmental law. International environmental law has for the past years witnessed remarkable evolutions and developments.

There is no great distinction between the two and as such, certain rules of international environmental law are also applied and form an integral part of internal norms. Moreover, states are under the obligation to respect and apply international norms in their territories and thus reduce the differences between these two branches of law. International environmental law is in effect a locomotive for national environmental law.

I- Evolution of international environmental law.

International environmental law owes much to ideological changes on environment in the 1960s. We consider as such that it is in the 1960s that the evolution of international environmental law accelerated. The international began to organize and impose regulations on the environment. Consequently, these regulations certainly contributed to the progress of international environmental law and the form it has taken today.

i- The appearance of a favorable ideological context

From 1960, attitudes and social representations to the problems of environment evolved in a positive sense. A supplementary contribution is also on the global ecological conscience.

a) Forewarning

The relations of man to environment which were first of all passive and indifferent have evolved. Pr. PRIEUR proved that, in history, from when man began to question himself on environmental issues, measures have been taken to remedy certain environmental catastrophes such as water pollution and diverse nuisances capable of having consequences on life.

According to this analysis, we have passed from a period when man sustained environmental damages and catastrophes to a time when he tries to organize and find solutions to limit at least the devastating effects of catastrophes. Actions on the international scene are made in specific domains on which states are on the ecological sphere. An example is the protection of certain environmental components as birds and fish. See 1902 convention on the protection of agricultural birds. It became the first multilateral instrument on the protection

of forestry and wild life. The convention protects only useful birds. Prey birds were considered not important, thus ignoring their role in the ecological balance.

Also, we can talk of the convention of fishing dating from the XIX century destined for the limiting of fishing zones between states and protection of marine spaces, considered of economic importance. Summarily, the law proved late the necessity to bypass the narrow framework to an international legal regulation of certain environmental elements.

b) Progressive emergence of an ecological conscience

It is in 1960 that the international community began to possess an ecological conscience awakening war due to ecological consequences. The TORREY CANNON case that affected the British and Belgians was still fresh in the minds. And also the shipwrecks of Petrolieu Erika at the French coast in 2003.d

Many factors favored this awareness. The role of mass media and scientific reports pulling attention to the dangers caused largely by human activities on the biosphere,. Gaseous emissions also contributed in accelerating the destruction of the vegetation, disappearances of certain animal species and in disposability of certain biological resources.

On the international domain, this dynamism is irrefutable. In 1968, the council of Europe adopted a text on the controls of waters and air. The OAU also drafted the African convention of the conservation of nature and natural resources. This convention is comprehensive as it applies to the conservation and utilization of the soil, water, plants and animals. From that time, a great regional mobilization in favor of the environment was witnessed. It is in this context that the assembly of the UN convened a world conference on environment, which marked a new stage in environmental law.

ii- Resolutions of conventional origins

The Stockholm conference and Rio declaration contributed enormously to the evolution of future legal norms.

a) Stockholm conference

It took place in the Stockholm Sweden from 5th to 10th June 1972. It became one of the greatest international conference convened by the UNO. This conference sanctioned several texts concerning environmental law.

The conference first adopted the Stckholm declaration. The many principles contained in this declaration played a primordial role in the development of environmental law.

II- Rules of international environmental law

Whether conventional or jurisprudence, international environmental rules are not uniform. They also include customary and public international law principles.

In this phramework, we shall content ourselves succinct analysis while trying to limit ourselves to the specific element of international environmental law. Because of its diversity, its elaboration and application is not always easy. Another peculiarity is the principles applicable to the international environmental law.

i- Diversity in the method of elaboration of environmental law rules.

The methods are different and much mastered if the Summa Divisio of international law principles are adopted. This includes conventional and non conventional methods.

a) Ediction by treaties

A good part of environmental law norms come from treaties and conventions. Traditionally, the elaboration of a treaty is in three phases; negotiation, conclusion and adoption. The law on treaties is regulated by the Vienna convention on treaties and pertinent rules of public international law.

b) Non conventional methods

This is through jurisprudence and customs

ii- a) Solutions

To surmount these difficulties, three methods are used.

- Adoption of rules and procedures for the negotiations of treaties on environmental law. As such negotiations in the form of conferences are preferred. Adhesion is in the form of declarations and resolutions. These instruments aim at preparing states and other parties to accept the planned legal evolution. As such, we think treaties have the chance of being accepted and applied if their comprehension is done I advance. After the declarations or resolutions, they can be signed. But this is not generally regulated. This is why conventions in environmental matters are characterized by flexibility. Most framework conventions are completed by additional protocols, a result of concessions between states with goal of précising their application and acceptance. This is why future negotiations are open on the subject. No opinion is rejected a priori. State interests are taken into account. We expect in convincing states to be implicated in the application of international environmental law rules.

b) Sanctions

Sanctions must be against companies and multinationals accused of causing damage to the environment and the states.

In the first case, sanctions in principle come as a result of procedures engaging the responsibility of this company in the form of damages inflicted by competent judicial

authority of the state concerned. Beneficiaries are NGOs, states and communities devastated by pollution.

Concerning states, there exists panoply of sanctions. As such, the publication of an international veport of inquiry engaging the responsibility of a state is a form of sanction. The use of ecological movements and environmental association of this report as a form of propaganda seriously damages the image and fame of the state concerned. It is the state that fixes and imposes rules of conduct in the form of recommendation and injunctions. Worst is the suppression of international aid or its simple annulations. Finally, a state may be held responsible for pollution and fined for the damages caused.

iii- a) Principles of protection and preservation of the environment.

- This principle obliges all states, international organizations, NGOs and individuals to work for the protection and preservation of the environment. It is an objective found in all international instruments in environmental law. There exist very explicit conventions on this state obligation. Article 192 of the UN convention on the law of the sea of 10th December 1982 stipulates "states have the obligation to protect and preserve the marine environment". This is in connection with article 2 of the African convention on the protection of nature and natural resources which stipulates: "state parties should engage to adopt measures to ensure the protection, utilization and the development of the soil, water, forest and wild life".

b) Principle of precaution

This is a corollary of the principle of prevention appearing first in the Rio declaration. According to its principle XV, "to protect the environment, precaution must be largely applies by states according to their capacity. In case of risk, grave or irreversible damages, the absence of scientific knowledge should not serve as a pretext to delay the adoption of measures aimed at the degradation of the environment".

c) The principle of paid pollutants

"It is he who damages the environment by acts of pollution who in principle must pay the cost of pollution". Legally, these persons are responsible and assure the compensation of damages caused to the environment. That is the significance of the principle of paid pollution.

There exist two diametrically opposed concepts to this principle. The liberal conception; which is part of the liberal economy. In this concept, reparation of pollution must not distort the free economy by according financial advantages to some, to the detriment of others. The second is based on the establishment of a pollution fund.

III- International law on biodiversity

The conception of biodiversity has evolved. Before now, the conservation of nature concerned the protection of certain species and certain habitats to sustain them. Environmental law was interested only on a reduced specie because of their economic, symbolic and affectionate value. It was a fragmented approach to the conservation of nature. It was judged appropriate to assure the conservative management and capable of guaranteeing the availability of resources quantitatively and qualitatively for a continuously growing population. A complete change of attitude was at the origin of a new approach much globalized, taking into account global diversity. As such, the concept of biodiversity was born. This uncertain concept witnessed an extraordinary advancement an became a universal notion in international environmental law.

According to article 21 of the 1992 Rio convention "biodiversity is understood as the variability of living organisms of all origins comprising amongst others land, marines and other aquatic ecosystems, and the complex ecology to which they belong. This includes diversity amongst and between species and ecosystems".

i- Aspects of biodiversity

It is necessary to distinguish between ecosystem, genetic and specie biodiversity.

a) Diversity of ecosystems

By definition, the ecosystem refers to temperature, humidity, acidity of the soil and water and elements indispensible for the subsistence of species. This is to say, all edible plants and animal species. To survive, each specie has the need of an appropriate ecosystem.

We should equally note that all species are interdependent on the ecosystem. This is characterized by the tangled an complex ecological relations AMONGST THEM; As such each element that is composed of organic matter fulfills a particular function that contributes to balance the ecosystem and permits life to be maintained.

b) Genetic diversity

With genetic biodiversity, we are concerned with elements or individuals that form a specie. Each species is an item that poses specific genetic heritage. This influences its morphology, biology and behaviors. It is the genetic heritage that individuals transfer to their descendants according to the laws of hereditary genetic diversity between individuals of the same specie constitutes a delicate element of biodiversity in a way as it permits a specie to evolve naturally and make less susceptible their appearance because of genetic introgression.

c) Diversity of species

A specie is defined as a category of animals or plants which shares the same genetic interest and can reproduce and procreate amongst themselves. By nature, species are greatly diverse

but only one quality is known. This diversity of specie is greatly unequally divided in the world.

ii- International instrument for the protection of biodiversity

Till date, the most important instrument is the UN convention on biodiversity adopted in 1991 and entered into application in 1993. The initiative of the international union for the conservation of nature, the completion of this convention was not easy. It is an ambitious text that treats diverse aspects as obligation of state parties relative to their responsibility towards the environment, conservation and utilization of biodiversity, access to resources and technology as well as institutional and financial mechanisms. It involves going thoroughly into the elements that constitute the work of the convention.

iii- Technology in the conservation and utilization of biodiversity

Technology is necessary for the conservation and utilization of biodiversity on one hand, technology usages and genetic resources on the other hand. Enterprises and organizations have facilitated access to technology and its transfer to governmental as well as private sectors in developing countries.

IV- African law on conservation

Africa must be considered as a continent on the fore guard in issues of biodiversity conservation.

a) The convention concluded by the colonial powers in Africa in the 1990s

During the 1900s the colonial powers in Africa had concluded a convention on the protection of wildlife. Also, the convention on the conservation of wildlife and flora in its natural state was adopted in 1933 and entered into application in January 1936. This convention brought together Belgium, Egypt, Italy, South Africa, Spain and Ethiopia. The effectiveness of this convention was limited because it did not include an institutional framework. But it however created national parks in Africa. The first and most prestigious parks were Kagira in Rwanda in 1934; Koroum Koza in Mozambique in 1936; Tsowo in Kenya 1938; Kafue in Zambia in 1958.

To these pioneer convention came others in the form of international conferences organized in a view to give a new impetus to the dynamics of conservation.

b) The Luseka accord of 8th September 1994.

It is a modern accord that aims at remedying the loopholes of the previous conventions, notably that of Algers of 15th September 1968. This accord contains clear obligations to states and institutions charged with the function of reducing and eliminating illicit commerce of wild life and flora.

c) African accord on conservation.

Africa also poses sub regional accords on the regulation of natural resources. These include;

- The convention of hunting formalities; applicable to tourist, adopted in February 1970 at Yamousoukrou in Ivory Coast. This convention regroups countries of the council of understanding and aims at harmonizing hunting formalities applicable to tourists. It also regulates the different categories of hunting, enables granting conditions and control of the possession and exploitation of hunting grounds. This accord entered into practice on the 1st of January 1997.
- Accord on the common regulation of flora and fauna adopted on 3rd December 1977 at Inougou, Nigeria. It is a complement to the 22nd May 1964 convention between states of the Lake Tchad (Cameroon, Tchad, Niger and Nigeria). This accord obliges states to decease from all acts capable of endangering the level and quality of water and the biological characteristics of the flora and fauna of the basin.
- Accord on the plan of action for national ecological management of the hydrological basin of Zambeze. It was concluded in May 28th 1987 at Harare in Zimbabwe between states of the coordination conference and development of Southern Africa. It entered into application on the same day of signature and established a program for the national ecological management of with the aim of reinforcing regional cooperation in the domain of sustainable development of parties and to avoid possible conflicts on issues of water resources in the hydrological basin of Zambeze.

d) National environmental law.

The protection of the environment in Cameroon is a recent preoccupation. Cameroon participated at the Stockholm conference but from the first three decades of independence, issues concerning the environment were totally forgotten. Much emphasis by public authorities was in exploitation of natural resources for economic gains.

A progressive change of attitude was witnessed recently because of certain factors: the multiplication of natural and industrial catastrophes, awareness of the scarcity of natural resources, the growing difference between agricultural products and food needs, increasing urbanization and its harmful effects on the environment. The climax of this awareness of Cameroon on environmental problems was the participation of Cameroon on the 1992 Rio de Janeiro conference.

The Cameroonian legal arsenal today constitutes laws and regulations completed by international accords and conventions to which Cameroon is a party.

REFERENCES

MEEDM, Grenelle 2 : le Hors-Série Grenelle 2. Ministère de l'Ecologie, Juillet 2010, http://www.developpement-durable.go...

MULLER F., Adoption de la loi Grenelle 2 . - Incidences sur les opérations de construction et les transactions immobilières, JCP N n° 29, 23 Juillet 2010, act. 576

MULLER F., LIEVRE X., Droit de l'environnement et pratique notariale, JCP N n° 30, 30 Juillet 2010, 1254

NAIM-GESBERT E., Maturité du droit de l'environnement, RJE 2010,

NEYRET L., Dieu nous garde de l'écologie des Parlements, D. 2010, p. 1008

NOTTE G., Loi n° 2010-788 du 12 juillet 2010 portant engagement national pour l'environnement (Grenelle II), JCP E n° 30, 29 Juillet 2010, act. 411