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African Legal Instruments as Regional Tools of Harmonization of International Environmental Law

Abstract: Environmental degradation in the world in general, and in Africa in particular, is occurring on a scale of increasing concern. The challenge for public policy is to change the relationship between people and their environment in order to reverse this trend. To this end, in an internal and an international context characterized by, on the one hand, the establishment of democracy and the rule of law and, on the other, by the globalization of environmental law following the Rio Conference (1992) in particular, the rule of law has naturally emerged as the key tool for these transformations. The aim of this article is to identify and analyze the African legal instruments and the actions of transformation in the relationship between the regional legal framework and international environment law, with the goal of the sustainability of natural resources and sustainable living environment as the key environmental issues in a fragile region. Africa is in the processes of decision making and adopting environmental protection methods as it embarks on a normative production process, with the aim of producing a law combining international standards and local norms and practices. The contemporary issues of environmental protection in Africa are analyzed in an interdisciplinary approach.
Keywords: Africa, legal instruments, regional tools, harmonization, international environmental law.

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Introduction

Environmental law is, without a doubt, a relatively young field of law.[1] Its main foundations were, in fact, laid during the 1990s, following the United Nations Conference on Environment and Development, held in Rio de Janeiro in 1992.[2] No doubt there existed many rules aimed at protecting the environment. However, in reality, these were only isolated and disparate texts, devoted to this or that sector of the environment, which were adopted in response to the appearance of specific environmental problems.

The word environment, although it is the subject of several definitions – not only doctrinal but also legal – contained in many national and international legal instruments, has yet to be the subject of a universal general definition. A large part of the doctrine has addressed the legal definitions, trying to analyze and identify their strengths and their shortcomings.

But case law has also played a major role in defining the environment. It was only during the 1990s, following global and regional awareness of the dangers of environmental degradation and the need to provide effective protection at all levels – national, regional and international, that this right has really been affirmed, in particular with the appearance of general texts aimed at ensuring global protection of the environment and sectoral texts devoted to entire areas of the environment, such as forests, water and climate.

However, this law has undergone, in less than two decades, a particularly remarkable development which today makes it a truly autonomous branch of

1 International law is the law of nations, also called public international law. It governs relations between international legal subjects (mainly states and international organizations). It is also referred to as interstate law, since it is primarily concerned with the rights and obligations of states. And international environmental law is that part of international law that deals with the conservation and management of the environment and the control of environmental pollution. See Elmene Bray, *Environmental law: Study guide for LCP 407-P (2003–2004)*. University of South Africa, Pretoria, 43, 47.

2 Environmental law brings together the legal rules aimed at protecting and establishing better management of the environment. This legal field is in full expansion. Therefore, environmental law is based on the need to protect land and sea resources which are essential for the survival of the future generation. Indeed, it evolves according to the development of technology and society. It applies to the biophysical and human environment.

law, with specific objectives and methods, and characterized by its vitality, flexibility and multidisciplinary nature, as well as its voluntarism. Indeed, in order to curb the serious environmental problems with which it finds itself confronted, the international community has, over the past two decades, introduced a real legal mechanism intended to fight against the various degradations of the environment and to promote genuine sustainable development throughout the world.

Basically, the evolution of the framework law approach to the environment in Africa can be seen in the main perspectives of the main conferences held in Stockholm in 1972[3] and in Rio de Janeiro in 1992.[4] However, it can be agreed that the environmental framework laws in Africa are the result both of the influence of the so-called Rio process and of the principles adopted during this process, in 1992. Thus, the dynamics of the laws and environmental frameworks in Africa stems from the execution of policies dictated by concern for sustainable development. The sustainable development paradigm has had an effect on the quantity of laws formulated and on the quality of provisions found in existing laws.

3 The Conference on the Human Environment held in Stockholm in June 1972 was certainly the first significant attempt to develop a global framework for environmental protection. See the *Report of the United Nations Conference on the Human Environment*. Stockholm, 5–16 June 1972. UN Doc. A/CONF.48/14/Rev1. For contemporary assessments of the outcomes, see Alexandre Kiss, and Jean-Didier Sicault, "La Conférence des Nations Unies sur l'Environnement (Stockholm, 5–16 June 1972)", *Annuaire Français de Droit International* 18. 1972: 603; Louis B. Sohn, "The Stockholm Declaration on the Human Environment", *Harvard International Law Journal* 14, no. 3. 1973: 423. For two contemporary accounts of key figures, see Wade Rowland, *The Plot to Save the World. The Life and Times of the Stockholm Conference on the Human Environment*. Toronto, 1973; Maurice Strong, "One Year after Stockholm: An Ecological Approach to Management", *Foreign Affairs* 51, no. 4. 1973: 690.

4 In 1992, the United Nations convened a second global meeting, known as the United Nations Conference on Environment and Development (UNCED), which was held in Rio de Janeiro from June 3 to 14, 1992. Two texts adopted during the UNCED have a general scope: the Declaration on Environment and Development and a program of action called Agenda 21. The Declaration reaffirms the Stockholm Declaration of 1972 to which it seeks to add, but its approach and philosophy are very different. Its central concept is sustainable development, which integrates development and environmental protection.

Indeed, the Rio process had the merit of putting back on the agenda the need for better management of the environment, and insisted on the compatibility of such measures with the development objectives of developing countries. It also indicated avenues to guide the action of States, including in the legislative field. And among these avenues, we can cite the Rio principles. Indeed, after the Rio de Janeiro conference, the emphasis placed on the principles adopted and the ecological effects of projects on the environment led to the adoption of provisions that reflect such principles, including for example the principle of prevention, highlighted by the procedure for Environmental Impact Assessment[5] and the principle of public participation.[6]

In the most recent environmental framework laws, EIA provisions typically entail the need to consider a number of proposed projects, as well as location imposition and the zoning of such projects; to examine both procedures for public participation and impact studies, and to determine the list of projects that are covered by this procedure.

Unlike other areas, when it comes to environmental protection globalization is intensifying, because the environment is everyone's business and knows no borders. Environmental pollution has a cross-border character. Actions against climate change, the protection of the seas against pollution and other similar problems are transnational. As Tadeusz Gadkowski writes, an analysis of contemporary treaties on the environment allows us to formulate the thesis that the creation and functioning of numerous institutions of cooperation, such as international organizations, is an expression of the trend towards the development of an international framework.[7] The contemporary doctrine

5 Hereinafter: EIA.

6 Under the EU's EIA Directive (2011/92/EU as amended by 2014/52/EU), major building or development projects in the EU must first be assessed for their impact on the environment. This is done before the project can start.

7 See Andrzej Gadkowski, and Tadeusz Gadkowski, "Nowe instytucje współpracy w ramach systemu Organizacji Narodów Zjednoczonych na przykładzie międzynarodowego prawa ochrony środowiska" in *System Narodów Zjednoczonych z polskiej perspektywy*, eds. E. Cała-Wacinkiewicz, J. Menkes, J. Nowakowska-Małusecka, A. Przyborowska-Klimc-

of international law combines issues of the common heritage of humanity with the concept of human rights. Thus, if the bottom of the seas, oceans and other areas remain beyond the borders of the jurisdiction of the States, because are considered as the common heritage of humanity, the obligation of their protection falls on the entire international community. According to Mr. Kamto, the environment restores the dialogue of sciences by bringing together various fields of knowledge to meet a single challenge: that of the survival of humanity.[8] Also the right of States to dispose of wealth and natural resources must also include their obligation to preserve them for present and future generations.

Africa is home to the second largest forest massif on the planet, after the Amazon Basin. Renowned for the richness of its biodiversity, it is characterized by the plurality of its uses and functions. The global and local economic importance of the forest, as well as its scientific and ecological potential, justify the interest granted to it by international society, concerned by the extent of the threats to which it is exposed, and by the weakness of the reaction of forest countries. Because in Africa the forest cover is receding at an alarming rate.

In Africa, the legal framework of the environment in general, and that of the forest in particular, dates from the colonial era, under the administrations of the colonial powers. Initially, it was a question of organizing the harvesting of wood by colonial companies, with the aim of satisfying the consumption of the metropolises. Forest law was then strongly characterised by its economic purpose, which only tempered the variants in the politics of the powers of the time. After their independence, the new States adopted legislation that

zak, and W. Sz. Staszewski. Warszawa, 2017, s. 251; see Genowefa Grabowska, *Europejskie prawo środowiska*. Warszawa, 2001, 59–80.

8 Maurice Kamto, "Le droit camerounais de l'environnement entre l'être et le non-être", Rapport introductif au Colloque international organisé les 29 et 30 avril 1992 à Yaounde par le Centre d'Étude de Recherche et de documentation en Droit international et de l'Environnement (CERDIE) sur le thème: "Droit et politiques publiques de l'Environnement au Cameroun". // Introductory report to the international colloquium organized on April 29 and 30, 1992 in Yaounde by the Centre d'Étude de Recherche et de documentation en Droit international et de l'Environnement (CERDIE) on the topic: "Droit et politiques publiques de l'Environnement au Cameroun".

reproduced colonial patterns, insisting on the industrial exploitation of wood, a strict framework for local uses, and the protection of wildlife.

The Reception of International Environmental Law at the African Regional Level

In general, environmental law is only the formalized expression of a new policy put in place, whose normative production has only significantly taken off in recent decades, which continues even today. It was under the decisive pressure of international public opinion, organized into various associative defence structures, that concerns related to the environment emerged. Faced with the ecological problems of the present time, international environmental law may not be a miracle cure, but it is absolutely unimaginable today that the biosphere can be protected without this law.[9]

To make the environment a legal element requiring protection is to recognize its essential place in contemporary society. Indeed, the pressure of ecological threats has led humanity to a general awareness. This awareness has led to the development and adoption of various environmental declarations, conventions, protocols and guidelines. Nowadays, international treaties increasingly refer to the need to preserve the environment in general and other particular domains.

9 See Alexandre Kiss, and Jean-Pierre Beurier, *Droit international de l'environnement*. Paris, 2000; see also Malgosia Fitzmaurice, and Jill Marshall, "The human right to a clean environment – phantom or reality? The European Court of Human Rights and English Courts perspective on balancing rights in environmental cases", *Nordic Journal of International Law* 76, no. 2–3. 2007: 113; Lyle Glowka, Françoise Burhenne-Guilmin, Hugh Synge, Jeffrey A. McNeely, and Lothar Gündling, *A Guide to the Convention on Biological Diversity*. Gland, and Cambridge 1994; Environmental Law Institute, *Addressing the Environmental Consequences of War: A Background Report*. Washington, DC, 1998; Mayda Jamo, "Droit et écogestion", *Revue internationale des sciences sociales*, no.109. 1986: 423; Sophie Lavallée, "Droit international de l'environnement" in *Juris Classeur Québec – Droit de l'environnement*. Lexis Nexis, 2013, 23; Jean Untermaier, "Le droit de l'environnement. Réflexions pour un premier bilan", *Armée de l'environnement*. 1980: 10.

In this logic, the International Court of Justice[10] in 1996 consecrates the environment as "a collective value conditioning life and health."[11] Indeed, it is important to point out that the International Court of Justice has already expressly recognized that different norms may all apply together to cover different aspects of a complex situation. Thus, the Court has referred to the need to take into account the prevention of environmental harm in assessing the necessity and proportionality of an armed action taken in self-defence or, more specifically, to the possibility that human rights norms and the norms of international humanitarian law (by analogy, also environmental norms) may apply together.[12]

Since environmental law is a relatively new field, it is largely found in written texts, even if certain general principles of law are relevant and even if customary international law is sometimes found in environmental law.[13]

10 Hereinafter: I.C.J.

11 Advisory Opinion Concerning the Legality of the Use of Nuclear Weapons by a State in Armed Conflict (Request for Advisory Opinion Submitted by the World Health Organization), International Court of Justice, 8 July 1996, available at: <https://www.refworld.org/cases,ICJ,3ae6b6d18.html>, access: 12.10.2022. Although the statute of the International Court of Justice refers to judicial decisions as a subsidiary source of determination of rules of law, the judgments and advisory opinions of the World Tribunal and the Court of Arbitration or other international tribunals are quite important and are often seen as the affirmation or revelation of customary international rules. The judgment of the Court of Arbitration of March 11, 1941 in the Trail smelter case is considered to have laid the foundations of international environmental law, at least with regard to transboundary pollution. The announced rule was confirmed by a more general principle prohibiting harm to another State, set out in the Corfu Canal case (*United Kingdom v. Albania*), I.C.J. 4, 1949, and reference was made to it. In the Lake Lanoux arbitration (*Spain v. France*) in 1956, 12 U.N.R.I.A. 281 (1957) in the context of transboundary water pollution.
Today, this rule is undoubtedly part of positive international law. Legal cases relating to environmental issues may arise as a result of judgments of the International Court of Justice, the European Court of Justice, the European and Inter-American Courts of Human Rights, decisions of the Dispute Resolution Procedure of the World Trade Organization, awards of international arbitration courts and judgments of the International Tribunal for the Law of the Sea. And also see *United States v. Canada* (1941) 3 Reports of International Arbitral Awards 1905.

12 Legality of the Threat or Use of Nuclear Weapons (Advisory Opinion) [1996] I.C.J Rep 226, para 30, 28; Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory (Advisory Opinion) [2004] I.C.J. Rep 136, para 106.

13 The rules of customary international law arise where there is a general recognition among states that settled practices (usus) and norms of behaviour are obligatory. A practice must

Governments protect the environment based on their various constitutional and legal powers to promote general welfare, regulate commerce and manage public lands, air, forest and water.[14] National authorities can accept additional responsibilities to protect the environment by entering into bilateral and multilateral treaties containing specific obligations. Litigation enforces laws and rules through civil, administrative or criminal lawsuits.

If a constitution entitles a specific environmental standard, the clause must be interpreted and applied. Problems may arise as to the appropriate remedy, which the constitution usually does not specify. In addition to determining obligations for companies subject to the rules, legal provisions may authorize individuals to sue an administrative body that abuses its freedom of action or that does not respect its jurisdiction. Faced with the pressure of ecological perils which risk making life even more difficult in Africa and on the entire planet, States can no longer continue to postpone the inclusion of environmental problems at the heart of development policies. The constitutional recognition of the right to a healthy environment for every citizen and the legal arsenal in terms of the environment attest that environmental concerns are seriously taken into account in Africa.

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constitute 'constant and uniform usag in order to qualify as custom. In international environmental law, customary rules generally play a subordinate role to the law contained in conventions, because their existence is difficult to establish. The principle of opinion juris sive necessitatis is also relevant. This principle dictates that state practice can only be taken as evidence of a rule of customary international law if the reason the states engages in the practice is that they believe they are under a legal obligation to do so.

14 A universally accepted legal definition of the environment may help to delimit the scope of the subject, to determine the application of legal rules, and to establish the degree of liability when damage occurs. In a broad sense, the environment can include all the natural, social and cultural conditions that influence the life of an individual or a community. Therefore, problems such as traffic jams, crime and noise can be considered as environmental problems. Geographically speaking, the environment can refer to a limited region or encompass the entire planet, including the atmosphere and the stratosphere.

The Foundations of the Harmonization of International Environmental Law in Africa: the Maputo Convention of 2003 and the Bamako Convention of 1991

The first initiative for a regional convention for the protection of nature and natural resources of the African continent was taken by the colonial powers, which adopted in 1900 the Convention on the preservation of wild animals, birds and fish in Africa.[15] This Convention aimed to prevent the uncontrolled slaughter of animals living in the wild and to ensure the conservation of certain species. It never entered into force because most of its signatories did not ratify it.

Thus, following this unsuccessful attempt to establish a treaty in this field, an international congress on the protection of nature was held in Paris in 1931 to prepare the organization of an international conference with a view to the adoption of a new text. On November 8, 1933, the Convention on the Conservation of Fauna and Flora in their Natural State was thus adopted. Entering into force on January 14, 1936, this Convention was the first legally binding instrument to provide for the creation of protected areas in Africa, such as national parks or nature reserves.

After the Second World War, a conference was convened in Bukavu[16] with the aim of revising the 1933 Convention in the light of the experiences gained. One of the main recommendations of this conference was to draw up another

15 The first international agreement to conserve African wildlife was signed in London on 19 May 1900 and was called the Convention for the Preservation of Wild Animals, Birds and Fish in Africa. It was signed by the colonial powers then governing much of Africa – France, Germany, Great Britain, Italy, Portugal and Spain – and its objective was 'to prevent the uncontrolled massacre and to ensure the conservation of diverse wild animal species in their African possessions which are useful to man or inoffensive'. The teeming herds of African wild animals were already starting to diminish, and the primary goal of the Convention was to preserve a good supply of game for trophy hunters, ivory traders and skin dealers.

16 SeeAenza Konaté, *L'Organisation de l'Unité Africaine et la protection juridique de l'environnement*. Thesis, Dissertation, Université de Limoges, 1998, 73–74; Mohamed Ali Mekouar, "La Convention africaine: petite histoire d'une grande renovation" *Environmental Policy and Law* 34, no. 1. 2004: 43–50; Mohamed Ali Mekouar, *Le droit à l'environnement dans la Charte africaine des droits de l'homme et des peuples*. Etude juridique en ligne de la FAO, no. 16.

convention which would lay down the essential elements of a general policy for the protection of nature in Africa, taking into account the primary interests of the African populations. In 1957, a group of experts met to study how to implement these recommendations. However, these efforts were interrupted by the process of the decolonization of the African continent.

As African countries became independent, the need for a new treaty on nature conservation was first expressed in the Arusha Manifesto of 1961, and two years later in 1963 the African Charter for the Protection and Conservation of Nature was adopted. Then, in 1964, the United Nations Economic Commission for Africa and UNESCO recommended that the London Convention of 1933 be revised and that the Organization of African Unity[17] request the assistance of the International Union for Conservation of Nature[18] to prepare a draft text in collaboration with FAO and UNESCO. The OAU entrusted the IUCN with this and, after several meetings of experts and the examination of a draft text by the member states of the OAU, the Convention on the conservation of nature and natural resources was adopted in Algiers by the OAU on September 15, 1968.[19]

The Algiers Convention has been signed by 45 African States and ratified by 32 of them. It has encouraged newly independent African states to make progress in the conservation of natural resources. However, the Convention did not establish the institutional structures that would have facilitated its effective implementation. Nor did it create the mechanisms to ensure that the Parties

17 Hereinafter: OAU.

18 Hereinafter: IUCN.

19 See Francoise Burhenne-Guilmin, "Revision of the 1968 African Convention for the Conservation of Nature and Natural Resources: A Summary of the Background and Process", *UICN Environmental Law Programme Newsletter*, 1/2003. It must be mentioned that the African continent played a pioneer role in the environment protection domain. The excellent illustration remains the Convention on Nature and Natural Resources of 1968 which was signed in Alger. In addition, the headquarters of the United Nations Environmental Programme is located in Nairobi/Kenya (African country) since 1972. It was also in Africa, in the Democratic Republic of Congo (the former Zaïre), that the 1975 initiative of the World Charter on Nature was launched and approved by the United Nations General Assembly on October 28, 1982, see Maurice Kamto, *Droit de l'environnement en Afrique*. Vanves, 1996: 13.

comply with and apply it. Nevertheless, the decade following its adoption was a fruitful phase in the development of international environmental law, with the adoption of several multilateral environmental agreements. For all these reasons, to which must be added the rapid progress of scientific knowledge in the field of the environment and subsequent developments in the law, it became necessary to revise the Algiers Convention.

The governments of Nigeria and Cameroon requested the OAU to review and update the Algiers Convention. In 1981,[20] at the request of the OAU, the IUCN submitted a draft revision of the Convention. Meetings and consultations took place until 1986, but the revision process was unsuccessful. In 1986, the government of Burkina Faso asked the OAU to resume the revision process. In 1999, the OAU requested the collaboration of IUCN, the United Nations Environment Program[21] and the United Nations Economic Commission for Africa for the preparation of a new text which would be adapted to the current state of international environmental law as well as contemporary scientific and political concepts and approaches. In 2000, an inter-agency process was initiated. The following year, a draft revision was drawn up.

A consultation of African Ministers of the Environment and Foreign Affairs then took place, and its results were considered during a meeting of governmental experts organized by the OAU in Nairobi in 2002. On this occasion, the project was discussed, commented and amended. The revised draft was then forwarded by the OAU to the African Ministerial Conference on the

20 See Fatsah Ouguergouz,*The African Charter on Human and Peoples' Rights: A comprehensive agenda for human dignity and sustainable democracy in Africa*. The Hague and London, 2003. The African Charter on Human and Peoples' Rights of 1981, gives recognition to environmental rights. Article 24 of the Charter lays down that: 'All peoples shall have the right to a general satisfactory environment favorable to their development.' Despite the significance of the Charter as the first international instrument to recognize the right to the environment and to proclaim it as a collective right, its formulation has been the subject of criticism; see Loretta A. Feris, and Dire Tladi, "Environmental rights" in *Socioeconomic rights in South Africa*, eds. D. Brand, and C. Heyns. Pretoria, 2005, 256. See also Morne Van der Linde "African responses to environmental protection", *Comparative and International Law Journal of Southern Africa* 35, no. 1. 2002: 99.

21 Hereinafter: UNEP.

Environment[22] in 2002. AMCEN recommended that the revision process be completed as soon as possible.

Therefore, the revised African Convention on the Conservation of Nature and Natural Resources was adopted a year later in Maputo, on July 11, 2003, by the Heads of State and Government at the second Summit of the African Union. The development of the Maputo Convention has benefited from strong technical support and assistance from UNEP – represented by its Program on Law and Institutional Development in Africa represented through its Environmental Law Program – and the African Union.

In addition, the Bamako Convention was adopted on January 30, 1991 in Bamako, Mali on the prohibition of the import of hazardous wastes and the control of their transboundary movements in Africa, inspired by the African Convention on the of nature and natural resources adopted by African Heads of State and Government in Algiers (1968). It also incorporates the Cairo guidelines and principles concerning the environmentally sound management of hazardous waste adopted by the UNEP Governing Council in its decision 14/30 of 17 June 1987. It is an adaptation of the Basel Convention (22 March 1989) by African countries in order to protect the human health of African populations and the environment against the harmful effects which may result from the production and transport of hazardous wastes. The Convention, which entered into force on April 22,1998, bans the import of hazardous waste produced outside Africa. This convention was negotiated because African countries felt that the provisions in the Basel Convention was not stringent enough and that it failed to address adequately three important problems: how to control shipments of mixed waste; how to address inadequate disposal by the importing state; and how to address the issue of bribery and forgery. The Bamako Convention requires parties to ban under their laws the importation of hazardous waste generated outside Africa. It requires parties to adopt laws making it illegal to dump hazardous waste into their territorial waters, exclusive economic zones and the continental shelf. Me-

22 Hereinafter: AMCEN.

kete and Ojwang note that this Convention addressed the criticism of the Basel Convention, when at its second Conference of the Parties, held in March 1994, it was decided that an immediate prohibition be imposed on all transboundary movements of hazardous wastes from the Organization for Economic Cooperation and Development[23] countries, destined for final disposal in non-OECD countries. The Organization of African Unity (now the AU) does not favor the importation of hazardous wastes into Africa, and it has called upon all member States to prohibit such transfers of wastes.[24]

Conclusion

Impactful changes in global climate have helped to raise the consciousness of States on the significance of environmental issues for over thirty years. In the past, countries focused their energies on relentless industrial development with little or no attention to its impact on the environment. Scientific evidence has shown that unbridled development leads to the loss of environmental capital, sometimes an irreversible phenomenon. As a result, many treaties and a flurry of legislation have come into both the regional and international arena. A wide variety of non-legislative instruments dealing with the threat of environmental degradation resulting from economic growth have been put into effect. Environmental law is the area of law that aims to defend and promote the environment. It is based on a principle of solidarity in the name of protecting the common good represented by the environment in the broad sense, for current and future generations. It is therefore above all a right of protection. Essentially of conventional origin, international environmental law is therefore voluntary and depends fundamentally on the consent of States, expressed on

23 Hereinafter: OECD.

24 Bekele Tekle Mekete, and Jackton Boma Ojwang, "The right to a healthy environment: Possible juridical bases", *South African Journal of Environmental Law and Policy* 3, no. 2. 1996: 155–176; see also Carl Bruch, and Wole Coker, "Breathing Life into Fundamental Principles: Constitutional Environmental Law in Africa", *Innovation* 6, no. 2. 1999: 1.

a case-by-case basis for each text or once and for all when it is the result of deliberation, or of an act issued by an authorized international body. In addition, the growing multiplicity of attacks on the natural environment corresponds to a splitting of standards into a multitude, which generates competition and overlaps that are likely to complicate the task of those responsible for implementing them. The sources of environmental law are dispersed in a set of treaties whose applicability is subject to the general rules of public international law and the sanctions are based on mechanisms that are themselves scattered between the internal order and the external order. The variety of standards is matched by the variety of legal sources, a situation that is not very favourable to integrated, easy and automatic application.

The principle of the relative effect of treaties conditions their binding nature both on the number of their ratifications and on the existence of any reservations accepted by the Parties. In addition, the draft texts contains various ambiguities which make their interpretation and their application delicate. Finally the standards which they set out are accompanied by various exceptions which reduce their scope of application and therefore their effective scope. Indeed, the law and the international environmental agencies today suffer from a lack of effectiveness and efficiency, which is detrimental to the achievement of its general objectives of conservation and sustainable management.

These two notions are fundamental for environmental law and their simple definition hides complex issues. Effectiveness is the quality of a legal rule applied by its recipients, while efficiency refers to the ability of a rule, through its application, to fulfil the purposes that motivated its enactment. An effective standard is therefore not necessarily effective, but effectiveness is a condition of effectiveness. Indeed, a legal rule can be drawn up by duly taking into account the various elements that will allow it to be effective, but only its practical application will show whether it really makes it possible to achieve the goals that prompted its adoption.

Experience and scientific expertise prove that prevention must be the golden rule of the environment, both for ecological and economic reasons. It is often im-

possible to remedy environmental damage: the extinction of a species of fauna or flora, erosion and the dumping of persistent contaminants into the sea create insoluble, even irreversible situations. Even when the damage can be remedied, the cost of rehabilitation is often prohibitive. In many cases, it is impossible to prevent all the risks of damage. In such cases, it may be considered useful to take measures to make the risk "as minimal as practicable" in order to allow necessary activities while at the same time protecting the environment and the rights of others. The principle of prevention is complex given the number and diversity of the legal instruments in which it is embedded. It should be seen as a general objective giving rise to a multitude of legal mechanisms, including the prior assessment of environmental damage, the licenses and authorizations which define the conditions under which one must act, and the remedies resulting from the violation of these conditions.

A reasonable conclusion to be drawn from the issues discussed above is that whilst treaties, protocols and environmental summits are very important in making issues of environmental protection the first priority of regional and international discourse, the real battle lies in being able to take actions and implement measures that will bring the fruits of those discussions to reality. This requires, to a large extent, the co-operation of state actors and the concerted efforts of regional and international institutions through a willing implementation of environmental commitments and the judicial enforcement of treaty obligations.

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