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Contributions of the Environmental Non Governmental Organisations and international law on climate change

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Abstract*—This study aims at finding out how Non Governmental Organisations (NGOs) perceive this issue and what roles they play in the fight against this phenomenon and in its formation in order to contribute to this domain and analyse contributions of Non Governmental Organisations to the international law on climate change. Results show that consequences of climate changeare visible and real. Thus, NGOs such as Friends of the Earth, Greenpeace, World Wild Funds (WWF), World Watch Institute (WWI) and Sierra Club emerged in the mode of the international law, bringing an effective participation in international negotiations by cooperating with States and by sensitizing citizens and political decision-makers.*

For this purpose, the United Nations Framework Convention on Climate Change (UNFCCC) was adopted in 1992 and the Kyoto Protocol in 1997 as well as several other multilateral treaties during different Conventions of Parties (COP). However, this struggle is opposed by industrialists and other States that protect their short-term interests and support the idea that climate change mightnot exist or climatic change is not due to men, but rather to natural phenomena. That is why NGOs have to actively play their role of pressure to call out to decision makers and populations on consequences of the climate change so that we can attenuate this phenomenon because the more we are doing nothing today, the more difficult it will be to avoid the consequences tomorrow.

***Keywords*— NGO, climate change, international law.**

I. INTRODUCTION

The climate change is a world phenomenon with consequences that will touch all the countries even if some will be more affected or will be more vulnerable than others. [1] It is a real fact with uncertain and disastrous causes and effects on the public health, on natural environments and biodiversity. We notice disturbances everywhere in the world: some zones get warmer than others, the cycle of water and climate changes, reduction of water quality, increase in sea level, drought, various carcinogenic diseases, etc. It constitutes a major challenge for our planet that we have to take up. This is why, this subject has become topical in scientific debates and publications for many years. This increasing world attention paid to the phenomenon of climate change to induce the international community, political decision-makers, the community of NGOs: World Wild Funds (WWF), World Watch Institute (WWI), Friends of the Earth, Greenpeace and Sierra Club to be been interested in these problems. This participation of NGOs and the recognition of their action in the international law of the environment became effective only with Rio conference in 1992 and the adoption of Diary 21.

Indeed, the stake of climate changes raise specific and important questions amNGOs which legal problems analyzed in this article "what law vis-a-vis the climate change?" [2]. Sometimes, available literature on the subject treats these questions in the broader framework of the international law in a general way and sometimes in a more specific way of the international law of the environment. While researchers on the environment and NGOs tend to have a rather alarmist vision, warning that climate change will lead to very serious consequences [3], as Yvo of Boer states: " the level of knowledge at which we are, denying global warming is as claiming that the earth is flat," [4] the others, the industrialists, assert that climate change is only one of many natural phenomena. This divergence of opinions continued even up to the level of choice of necessary legal framework to examine the question of climate changes and pushes us into questionning about the contribution of NGOs on climate change law.

This article studies the role of NGOs on climate change law, treating of different aspects of climate changes mainly the question of the NGOs' fight and the question of principles, rules or clauses of the international law of the environment that explicitly approaches climate changes. Thus, this work is divided into two parts. The first part

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deals with the emergence of NGOs in the mode of the international law. The second part treats of the influence of NGOSs in the formation of the climate change law.

II. EMERGENCE OF NGOS IN THE MODE OF THE INTERNATIONAL LAW

It is impossible to write the history of the answer to climate change without mentioning non-governmental actors, especially environmental Non-Governmental Organisations (NGOs). From a historical point of view, tangible emergence of ecogogist claims in political arena in the 1960s and 1970s even if some of them draw their origin from the first mobilisations of scientific networks and scholra communities at the beginning of the last century. [5] During this period, actions led by NGOs were focused only on the protection of the biodiversity, while at about the 1990s this problem of climate changes will become one of the first environmental concerns. However, it should be noted that the problem of climate changes permitted to increase the number of NGOs. Thus, big NGOs such as WWF, Greenpeace, Friends of the Earth and many others were established.

Indeed, the raise of the question of climate changes also upset the list of actions of the environmental NGOs. However, the effectiveness of their actions in international environment law was recognized only during the Rio conference in 1992. Thus, NGOs are perceived as key mediators defending moral and ethic values, offering a sketch answer to the famous policy crisis. They often appear, beside the scientific community, as the only organizations capable of developping a non-political and detached vision of the continuation of strictly material or financial interests. [5] The international community formally reacted to this problem by adopting the United Nations Framework Convention on Climate changes in 1992 and the Kyoto Protocol at the United Nations Framework Convention on Climate Change in 1997. [6] These instruments were developped to create an international legal mode in which developed countries are subjected to constraining obligations of reduction of greenhouse gas emissions within a fixed calendar and in determined quantities through international negotiations. Yet, today it is clear that changes in this legal mode are essential in order to make it more effective and better adapted to a world that changed much since 1997. [7]

A. International legal mode on climate changes

The Stockholm conference in 1972 is regarded as "the starting point of the right and the policies of environment protection". [8] This conference was the first to form the bases of the world governance on the environment. It led to a declaration of 26 applicable principles regarding the international environment law. Thereafter, the mode on the climate developped quickly with the adoption of the Rio Declaration in 1992, another statement of principles, and the UNFCCC in 1992 that aimed to stabilising the greenhouse gas (GHG) concentration and the development of the Kyoto Protocol in 1997 during the third COP3 held in Kyoto, Japan [7] that engages the developed countries and the developping ones to achieve the goals of the UNFCCC [9] because climate change will be one of the major forces that will influence perspectives of the human development during the 21st century. By its impact on the ecology, precipitations, temperatures and climatic systems, global warming will directly affect all the countries. Nobody will be spared. However, some countries and individuals are more vulnerable than others. In the lNGOs term, whole humanity is exposed to the risks. Nevertheless, more immediately, risks and vulnerabilities concern mainly the most disadvantaged populations of the world. Climate change will strike a world characterised by serious human development failures. Many doubts remain about the chronology, the nature and the scale of the impacts to come. However, the forces released by global warming will probably amplify the existing handicaps. The place and the means of subsistence will become powerful determining factors concentrated in fragile ecological zones, on arid grounds exposed to drought, in easily flooded coastal areas and in precarious urban slums where the poor are submitted to the risks of climate change. Moreover, they are deprived of resources cope with these risks. [10]

In this context, the need for establishing an international legal mode on climate change appears obvious. The answer to the needs of the international community permitted to the United Nations Framework Convention on Climate Change to be established in 1992 and to come into effect in 1994, that is, two years after its adoption. Today, it is made of 195 members. Its main goal is "to stabilise the greenhouse gas concentrations in the atmosphere at a level that stops any dangerous anthropic disturbance of the climatic system" [11]. Article 3 of the UNFCCC establishes the principles that should guide negotiations in order to achieve this goal, that is, particularly intra and intergovernmental fairness, the principle of common but differentiated responsibilities, special needs of the developing countries, the principle of precaution and sustainable development [12]. The UNFCCC also creates, in its articles 7, 8, 9 and10, institutions for its implementation, that is, the Conference of the Parties, the secretariat, the subsidiary body of scientific and technological council, and the subsidiary implementation body.

The United Nations Framework Convention on Climate Change imposes on states to inform and regularly update the inventory of anthropic emissions and if necessary measures to reduce climate change as well as obligation to

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communicate the measures to apply this convention. There are other obligations that are imposed according to specificity of the regional and national priorities while others are only imposed on the developed countries. For example, the obligation to provide necessary financial resources to the developing countries in order to help them to implement the measures of the Convention. [13]

Finally, the UNFCCC has forseen in articles 15,16 and 17 possibilities by the parties to carry out improvement, to add appendices and to adopt protocols. That is why in 1997, during COP3, in accordance with article 17 of the UNFCCC, the Kyoto Protocol was adopted, but came into effect only in 2005. It constitutes an innovative framework in the fight against climate changes. In spite of its imperfections, the Protocol is one of the most successful mechanisms of implementation and control of the international law. [14] This protocol obliges not only to the States to carry out quantified commitments of reduction of greenhouse gas (reduce at least 5% greenhouse gas emissions compared to their level in 1990), but also reserves. By elaborating this protocol, the international community seemed to have intended to create a constraining legal instrument that will be renewed indefinitely by way of periods of commitments that will be adjusted as world realities change. This protocol constitutes a notable projection in the fight against the climatic evolution by fixing constraining obligations for some parties. [14] Yet it was not the case because the USA, the biggest pollutant, did not ratify the protocol, returning the absence of commitments of the other big pollutants like China and India. In 2011, Canada denounced it and countries like Japan, Russia and New Zealand announced that they will not take part in the second period of commitments [7]. The second period of commitments of the Kyoto Protocol aimed at a new commitment approach of reduction of greenhouse gas emissions.

In 2009, several Heads of States met in Copenhagen in the hope of concluding a new instrument that will govern the international mode on climate changes. However, this conference did not have hoped success. The result was just a political agreement. Moreover, this agreement has never been adopted by the COP. As for its contents as regards climate changes, this agreement forsees that all the countries must act by accepting new commitments of reduction of emissions and by taking acceptable attenuation actions while leaving a breach to the developed countries to fix their contributions themselves. In spite of the circumstances around its adoption, the Copenhagen Agreement marks the starting point of a new approach that the international community considers in the research of solution to the problem of climate changes.

B. Participation of NGOs by the co-operation with the States and the sensitizing of the citizens and the decision-makers

NGOs have the advantage of working in the field and of better perceiving constraints and real ineffectivities of the actions taken or the need to react vis-a-vis an ecological urgency. This puts them in the position of being the negociators par excellence of public administrations as far as populations' information on environmental realities is concerned. Besides, to a certain extent, NGOs' services are used for the development of local or national scale plans that meet a difficulty or an urgent need. [15] This participation concern both environmental policies and international obligations as far as environment is concerned. It appears by a participation in decision-making processes, in the definition of strategies or the elaboration of laws or regulations, in the statement of opinions as experts even as environmental diplomacy. [15]

1. Participation of NGOs in international negotiations on climate changes

The participation of NGOs rooted in international law through two resolutions fundamentally inspired by the United Nations Charter of 1945. The first, resolution 1296 of May 23rd 1968 is consolidated by resolution 1996/31 of July 25th 1996 that mentions the participation of NGOs in the elaboration of environmental policies then concedes a recognition in NGOs of the developping countries in according to their competences. [15] Thus, NGOs will profit from statutes forming a triptych: general, specialized or specific advisory statute. On this basis, organizations in full possession of general advisory statute can require to register a question in the agenda or to participate in debates of the Economic and Social Council like the Sustainable Development Commission. This opportunity offers them the pledge to even give a written communication on the registered question or an oral presentation during the meeting on request of the concerned authority. [15]

2. The sensitizing of citizens and political decision-makers

The sensitizing is the central and main role of NGOs. It consists in informing decision-makers and citizens or simply in sensitizing them on the major ecological challenges at two levels: at the level of citizens and at the level of decision-makers. Decision-makers employ NGOs as a relay in the diffusion of information on the environment. Here, the role of NGOs is to accompany public authorities in the democratisation of challenges and orientations of the plans at the articulation stage.

As a recall, NGOs generally conduct field work. Thus, they can show the ineffectiveness of some actions and propose more effective ones. Their presence in the field enables them to be constantly informed on populations'

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environmental realities. They can present to decision-makers real situations. So, in the framework of sensitizing, NGOs act as an intermediary between decision-makers and citizens. [16]

III. INFLUENCE OF NGOS IN THE FORMATION OF CLIMATIC CHANGE LAW

The influence of NGOs on the international law of the climate changes can be direct or indirect. It is direct when NGOs actively take part in writing an international standard, in an intergovernmental conference. It is the case of active participation of several NGOs during negotiations on United Nations Framework Convention on Climate Change. It is indirect when it influences the formulation of a global policy that will be concretized in legal standards, founded by the States. [16]

The international and scientific community has become aware of the danger of climate changes due to scientific projections on the one hand, and to the pressure of pro-environmental organisations on the other hand. These projections enabled political decision-makers to become aware of the fact that it is vital to fight against this phenomenon of climate changes by providing necessary means in order to attenuate the impacts. That is why several agreements, conventions, actions and institutions were founded to fighti against climate changes. Let us see how this fight is carried out, how positive or negative their results are, and what strategies will be used.

A. NGOs that participated in the negotiations at the Rio Convention in 1992 on climate changes

During the negotiations for the United Nations Framework Convention on Climate Change, certain NGOs played an importnat role. Indeed, they were involved in the negotiations from the beginning. These NGOs are: World Wildlife Funds (WWF), Greenpeace, Sierra Club and Worldwatch Institute. The World Wildlife Funds (WWF) is the biggest independent environmental organisation. It has national representations and plans in several countries. WWF that has access to a large range of national and international actors, and in business communities, played an important role during the negotiations. Greenpeace is the most known, particularly thanks to its skilful use of mass media. It was actively involved in the negotiations for the United Nations Framework Convention on Climate Change. Worldwatch Institute (WWI) also plays a significant role during negotiations on the climate. Besides, several other NGOs have an active part at different scales during negotiations. [16]

In general, the role of these NGOs as far as protection of the planet is concerned, is complex; however, since the origin, the heart of their action consists in informing the public opinion and in diffusing the idea that the environmental challenges claim urgent decisions. For them, it is a question of alerting the opinion, of underlining the paradoxes of the international public policies particularly the misconduct of States. [17] NGOs have a completely singular and major profile at the level as of international negotiations. Successively, experts elected by international institutions (U.N.) or agitators handling the weapon of the mobilization of the public opinion, some can play both registers while others are excellent in either because of their history. WWF, Sierra Club or IUCN are knowm for their work of expert on protection related questions, while Greenpeace or the Friends of the Earth have an image of troublemaker that they purposely use. [17]

B. Implication of NGOs in the adoption of the international standards on protection of the nature

NGOS took an active part in the adoption of the international standards on protection of the nature. They played an important role in fixing of quotas for the ivory trade, within the Convention on the international trade of fauna and flora endangered species because they were the only ones to have connections with the local level, and to have data on elephant hunters and illegal ivory trade. In the London Convention on the immersion of sea waste, the participation of Greenpeace was important and helped in the adoptionof the precautionary principle in 1990. The International Union for Conservation of Nature (IUCN) has an unquestionable influence on the main international environmental agreements. The co-operation of the IUCN with the States takes place in several dimensions: it offers article proposals, for example for the Aarhus Convention, on the access to information, public participation in the process and access to justice for environmental questions. More recently, during COP21 several NGOs were accredited participate in different discussions as observors. Thus, these NGOs played a role of mediator between the parties in order to make sure that the directives and the targets exposed in the final document are ambitious. [16]

C. Emergence of NGOs and Multinationals as actors of the international climate change law and production of the software law

Climate change is obviously a world problem that questions borders and time. It goes beyond the national framework to impose to a real international issue in the view of power relationship, caused by the rift between the Countries of North-South, drought, water scarceness, pollution, threat of the biodiversity, social crisis, migratory movement, public health and security challenge of international dimension. [18] Since the industrial revolution, productivity and growth has been the principal goal of companies. More and more globalised, today these

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companies are part of the daily life of the vast majority of humanity. Their growth was so fast that they did not take into account the side effects of their activities on our environment.

According to Sergent, it is from 1970s that companies have become the target of a civil society that organises and denounces. With the sentence of apartheid and the boycott of the South-African system, notorious incidents such as the Exxon Valdez oil pollution in Alaska, the debate on the Nike sweatshops (workshops of misery) in 1992, companies start to realise that their obligations go beyond the simple production of wealth: some ethical principles seem to appear in the business world. [19] Géraud de Lassus Saint-Genies supports the emergence of a governance in networks in the promotion of the climate change law that is more transnational. [20]

Lately, up-to-date terms such as self-regulation, social responsibility of the companies and sustainable development have become common. Today, some companies previously sadly famous spend millions on advertisements. They praise virtues of their healthy practices towards the environment and the workers of Southern countries: companies want to egt rid of their image of polluters and operators. Private codes of conduct constitute an excellent way to reach this goal. Thus, the modern era witnesses a multiplication of private charters of good conduct in the environmental field. Their scope is variable. Some environmental good conduct concerns only one sector, several companies of the same sector adhere to them. Finally, a company can create its own charter of conduct that it respects unilaterally.

In general, these codes contain multiple commitments among which some concern preservation of the environment in particular. For instance, the Caterpillar company published a code in which a whole paragraph is exclusively devoted to the environment. All contain ethical concerns and support that respect for the environment is an essential concern of the company. The concept of social responsability of companies as such appeared for the first time in 1994 by the name of Social Corporate Responsability (CSR) on the occasion of a declaration of European companies against social exclusion. It is based on a voluntarist approach of business ethics and economic analyses having supported that the company must take into account expectations of the society.

The European Commission defines it in its communication of July 2nd 2002 about the Social and Environmental responsibility as a contribution of the companies to sustainable development through voluntary integration by the companies of social and environmental concerns to their marketing activities and their relationships with their stakeholders. Afterwards, the concept became more popular. Private codes of conduct constitute one of the illustrations of the implementation of the Social and Environmental Responsibility, besides the diffusion of voluntary reports, the approach of standard certification like ISO. Do ethical charters and codes of conduct really have a legal value? Mr J-B Racine defines a code of conduct as "a set of commitments adopted by a company or a group of private companies, gathered in a single document interchangeably called code, chartre or guide and that shows the characteristic of not being formally compulsory". [21]

Private codes of conduct have in more the characteristic to be elaborated by private individuals. Thus, the commonly allowed characteristics of these codes are their uncompulsory and evolutionary character. They constitute what the authors call the Soft Law. Although these charters are not object to any regulation regulating and making them compulsory, their evolution results in a legal recognition, witness of an embryonic legal value. It is a new form of regulation of the economic and social reports. Farjat [21] emphasises that "private codes of conduct" that initially developed at the international level, for lack of State, have become very popular today. He defines them as sets of recommendations that develop in adaptation to circumstances and without a compulsary character, being based on self-control. First, they are spotted by their author: a private individual. This movement, which took the shape of professional standardisation, professions or companies preferring to be regulated rather than to be sanctioned by the State, which affects their brand image. Besides these external relation concerns, there is a concern of organizing internal relations with the employees, the suppliers, etc., the system of competition does not mean legal vacuum. In front of this situation, the State recognises the usefulness of this set but is reluctant to recognise legitimacy to its private source.The author notes that private codes of conduct are only an appearance of non-official standardisation phenomena that are not new, but that were hidden by the dominant doctrine for a long time because they are against positive source law and against the official ideology. Thus, they constitute what the authors call "soft right", "green right" or "soft law [21]. From a legal point of view, codes of conduct are one of the many signs of a "soft right" that authors finally seem to take into consideration.

The ethical charter is useful when it fulfills a complementary role to the rules of procedure, that it emphsaises concerns of the company in an accurate field and that it provides action trails. According to Antonmattei and Vivie, "a charter can also constitute a good tool of prevention, on condition that it remains informative, with a view to sensitise the actors to their rights and their obligations". Indeed, these commitments and directives

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belong to the field of the "soft law", without a legally constraining character. [22]

D. Prospects

Prospects for the years to come consist in containing climate change and its consequences by the attenuation of the effects. Thus, the creation of new instruments seems obvious and the improvement of available measures and the adaptation to current developments are necessary. For that, we should urge actors who intervene, near or far, in the change in mentality by fighting against the opinions of those people who only pursue their own short-term interests.

States' reticence to strictly take into account protection of the environment was at the basis of the awakening of the international civil society, that has become one of the new actors of the international law, who thanks to actors networks try to influence progress for the implementation of a climatic international law. The international climate change law is perceived as the right of a strong mobilisation [23]. This mobilization declines in the context of participative democracy on the international plan. [24] More and more, we see the emergence of plurality of actors in the field of the international climate change law. [25]

Pluralism of actors is at the basis of the production of a legal pluralism on the field of the environmental international public order, that is beyond the traditional framework of the international law with only States and International organizations as respectively orginal and derived subjects from the international law. The implementation of volunteer private legal instruments in order to protect the environment through the certification approach, the promotion of the social and environmental responsibility, the emergence of codes of conduct, the consideration of States of measures of traceability lead to some complementarity between the soft law and the hard law, pleads for the effective existence of other new actors of the field of the international law about public climatic order.

Requirements of the European market more and more certified or of the North-American leads to a new dynamics of an international and sometimes transnational law on climate change. The influence of NGOs in the development of international legal instruments or in the promotion of a citizen debate about the consideration of climate change, the promotion of ecological activism, the proliferation of eco-warriors fighting against war ships prove a new configuration of the international public order and mechanisms of development and implementation of the standards on the international plan, especially these issues concern the climate change in the context of globalisation, characterized by the tentacular character with domino effect of the States' actions on the whole of planet, was the backbone of the awakening of the international civil society and of the promotion of the participative international democracy on the climatic level.

IV. CONCLUSION

In this study we saw how NGOs conceive problems of climate changes and the roles they play in international negotiations to fight against this phenomenon.

Climate change is due to both human activities and natural causes. Facts and consequences are already visible. The awakening by most scientific community, political decision-makers and the community of NGOs made this phenomenon an important subject, headlining news and governments' programs.

So, a fight against this phenomenon was implemented with the adoption of the United Nations Framework Convention on Climate Change and the Kyoto Protocol as well as several COP are organised to seek mechanisms of attenuation. However, this fight is opposed by industrialists and other States that pursue only their short-term interests and support the idea that climate change would not exist or is not due to men's activities but rather to natural phenomena. In most cases, as these States do not make a commitment only for saving the climate, the new mode should plan at the same time constraining and flexible devices in order not to dissuade parties to subscribe to it. So, it is essential to adopt a text that should permit the perpetuation of the legal mode instead of remaining static with the only commitments of the developed States. That is why, NGOs have to actively play their part of pressure in order to call on political decision-makers and the population of the consequences of climate changes in order to attenuate this phenomenon because the more we do nothing today, the more difficult il will be difficult to avoid the consequences tomorrow.

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