

# **CENTRE INTERNATIONAL de DROIT COMPARÉ de L'ENVIRONNEMENT**

INTERNATIONAL CENTRE OF COMPARATIVE ENVIRONMENTAL LAW

Special consultative status with the United Nations Economic and Social Council (ECOSOC)

Observer Status with the United Nations Environment Assembly and its subsidiary bodies

Consultative status with La Francophonie

## **PROPOSALS TO FURTHER ENHANCE THE MONTEVIDEO PROGRAM**

### **I- Environmental Law Indicators**

Under Program Area I on *Effectiveness of Environmental Law*, it is proposed to add a new section entitled **Environmental Law Indicators**. The rationale and objective of this are as follows:

**Objective:** To develop legal indicators in support of effective implementation of environmental law.

**Strategy:** Whereas environmental indicators exist in scientific, ecological and economic fields, they are missing in the legal sphere. For instance, the 2030 Sustainable Development Goals have a robust global indicator framework, but the letter does not incorporate legal indicators relating to environmental law. There is therefore a crucial need to fill this effectiveness gap by developing legal indicators for the environment.

**Action:**

(a) Assist in the development of legal indicators intended to empirically measure the effective implementation of environmental law at international, regional, national and local levels, providing specific instruments for qualitative and quantitative assessment of the existence, the substance, the procedures and the enforcement of environmental law.

(b) The creation of legal indicators for the environment requires identifying, formulating, qualifying and prioritizing indicators on the law-making process, on the content of the rules, on procedural matters and on administrative, judicial and social controls. The various criteria of effectiveness to consider in this regard include in particular: the existence or absence of a given rule; its content and relevance in terms of progress or regression; public participation in its development; its social value vis-à-vis public expectations; and its enforcement level through administrative, judicial and social mechanisms. The aggregation of several indicators then mathematically allows measuring the extent to which approved policies are effectively implemented by environmental laws and regulations.

(c) Once operational, the legal indicators for the environment will allow to collect concrete information on the real circumstances under which the rules are implemented, which will lead to a better measurement and appreciation of their effectiveness, nationally and internationally. They will permit science-based assessment of law enforcement, which in turn will serve to better inform decision-makers about the legal process of environmental law implementation, showing gaps and regressions, guiding new reforms, and engaging the public at large, all of which will eventually promote greater respect for environmental law, ensuring its progression and avoiding its regression.



# **C**ENTRE **I**NTERNATIONAL de **D**ROIT **C**OMPARÉ de **I**'**E**NVIRONNEMENT

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NB - In this context, it should be noted that CIDCE conducted in 2017, on behalf of the *Organisation internationale de la Francophonie* and *IFDD* a study on legal indicators for environmental law in Francophone Africa, underpinned by four pilot case studies from Benin, Cameroon, Madagascar and Tunisia. In February 2018 a meeting in Yaoundé (Cameroon) was organized about that study with UN environment and IUCN.

## **II- Principle of non-regression**

Under section *E. Strengthening and development of international environmental law* of Programme Area I on *Effectiveness of Environmental Law*, it is proposed to add language to paragraph (c), to read as follows:

*(c) Review the application of the principles contained in the 1972 Stockholm Declaration of the United Nations Conference on the Human Environment, the 1992 Rio Declaration on Environment and Development, Agenda 21, the Johannesburg Declaration on Sustainable Development, and the Johannesburg Plan of Implementation of the World Summit on Sustainable Development, the 2012 Future We Want of United Nations Conference on Sustainable Development, and the 2030 Agenda for Sustainable Development of the United Nations Sustainable Development Summit, and identify the extent to which they have been applied, as well as the need to develop new principles of environmental law, such the principle of non-regression;*

NB - It should be noted in this respect that the **principle of non-regression** has been increasingly recognized over the last decade, both in national law (e.g. constitutions of Bhutan and Ecuador; laws of Côte d'Ivoire and France) and in international instruments (e.g. the *Future We Want*), as well as in court decisions (e.g. cases in Belgium, Hungary, Spain and from the Inter-American Court of Human Rights). This new principle of environmental law linked with the recognition of a human right to the environment has been introduced in the regional convention of Escazu in march 2018.

## **III- Environmentally displaced persons**

The need for a legal status of environmental displaced has been affirmed in the Montevideo IV program and the International Center for Comparative Environmental Law has been working for several years on a draft International Convention on Environmental Displacement, the first version of which dates from 1986 . While there were high expectations following the New York Declaration of September 2016 which announced the conduct of discussions for the adoption, in 2018, of a global compact on safe, orderly and regular migration; it was somewhat disappointed that the last draft of the pact, the latest version of which dates from June 29, 2018 and which will be adopted in Marrakech on December 10 and 11, 2018, addresses only very briefly the question, especially in its paragraphs. 18-d and h, and 21-h. Yet the issue of environmental migration remains an issue of major importance and requiring special attention. For this purpose it is important to devote a special convention to the proper regulation of the situation. Such a Convention addresses the concern of paragraph

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III-A-b of the Montevideo IV Program. CIDCE makes available its preliminary draft Convention, the latest version of which dates from April 2018.

Under section *E. Environmental emergencies and natural disasters* of Programme Area III on *Challenges for environmental law*, it is proposed to add a sentence at the end of paragraph (e), to read as follows:

(e) *Contribute, as needed, to the further study, in cooperation with relevant organizations, on the need for and feasibility of developing a special legal status and protection for those displaced as a result of environmental emergencies and disasters and other environmental legal issues arising from population displacement, including through a global convention on the status of environmentally displaced persons.*

NB - It should be noted in this regard that, in an effort to address the lack of an international legally binding instrument providing for the protection of the rights of persons displaced owing to environmental emergencies and disasters, CIDCE supported the development of a Draft Convention on the Status of Environmentally Displaced Persons, the fourth version of which was issued in May 2018 (<https://cidce.org/deplaces-environnementaux-refugies-ecologiques-environmentally-displaced-persons>).

## IV- An international covenant on the human right to the environment

Under section *A. Human rights and the environment* of Programme Area IV on *Relationships with other fields*, the following is proposed:

**Objective:** add a sentence to read as follows: *To examine the utility of rights-based approaches to environmental issues, including through the development of an international covenant on the human right to the environment*

**Actions:** add a new paragraph to read as follows: *(e) Support the development of an international covenant on the human right to the environment, in light of UN General Assembly Resolution 72/277.*

NB - It should be noted in this context that, in an effort to address the lack of a legally binding instrument providing for the protection of the right to the environment at the global level, CIDCE drafted in 2017 a proposed Third International Covenant on the Right of Human Beings to the Environment (<https://cidce.org/declaration-de-brasilia-juges-justice-de-leau>), and that the UN General Assembly adopted in May 2018 Resolution 72/277 - Towards a Global Pact for the Environment.

## V- Environment and business

Under Program Area IV on *Relationships with other fields*, it is proposed to add a new section entitled **Environment and business**. The rationale and objective of this are as follows:

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**Objective:** There is a lack of standardisation and definitions in everything related to "green" economic activities and this leads to limits and burdens the development of "green projects". The objective is to create a legal environmental standardisation and regularisation of the business sector in order to improve the development of green businesses, the respect of human rights and a stronger environmental justice.

**Strategy:** It is a barrier for the business sector to reduce their environmental impacts and contribute to strengthening environmental protection. The business sector, entrepreneurs, have growing pressure in order to comply with environmental regulations. They shall work with more precise tools and regulations to enable their development while respecting and protecting the environment.

## **Action:**

(a) Create a Green Index to identify and define everything related to "green activities", through collaboration between Governments, relevant organizations and civil society.

(b) Add an environmental index in the Doing Business Report: Doing Business Report indirectly measures the administrative burdens that are obstacles in the setting up and life of businesses. There are five sections including the institutional index, the financial index, the economic index, the social index and the institutional legal index.

(c) Develop guidelines, standards and regulations on doing green business.

(d) Encourage discussion on the relationship between business and environmental concerns and information, as well as transparency and public participation within the appropriate forums in ways that ensure the full and effective consideration of relevant environmental concerns and information.

## **VI- Environment and Aeronautic**

A- Under the section *F. Pollution prevention and control* of Program Area **III. Challenges for environmental law**, it is proposed to add a new paragraph (p), to read as follows:

*(p) Improve the aeronautical legal framework, in terms of prevention and strategy of indoor air pollution risks of aircraft to reduce risks to human health.*

B- Under Program Area **IV on Relationships with other fields**, it is proposed to add a new section entitled **Environment and Aeronautic**. The rationale and objective of this are as follows:

## **D. Environment and Aeronautic**

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**Objectives:** to improve the aeronautical legal framework, in terms of prevention and strategy of indoor air pollution risks of aircraft to reduce risks to human health and to promote environmental mediation to amicably settle the disputes related to the Fume Event (pollution of the interior air of the planes).

**Strategy:** establish a specific standard Fume event, reinforce current standards and allow the automatic referral of sustainable ombusman by the states and administrative authorities questioned on the issues of Fume Event.

**Action:**

- a) Create a sustainable ombusman cell environmental law specialists / create a safe boardingpass and safety overhead
- b) Launch an international public campaign in the same way as that of Asbestos - Seize the Directorates General of Civil Aviation by State of a request for mediation and referral to the European and World Instances
- c) Accelerate access to international information and public participation on the Fume event issue by promoting information through the press / internet / colloquia and events.

**Contributors:**

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Limoges, Friday, August 31, 2018

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