Editorial

The paradox of localism in international environmental law

The Oxford English Dictionary provides four definitions of localism – perhaps most infamously used in the UK context recently in the Localism Act 2011 – these definitions reflecting four distinct features of the term:

1 preference for a particular place or region, especially that in which one lives …
2 policy or practice of giving greater control to local residents, representatives, and authorities (as opposed to national or central government)
3 something characteristic of a particular place or region; a local feature or custom
4 belief that fevers or febrile diseases originate in a particular part or organ of the body.

Thus, to one extent or another, localism reflects a diverse range of characteristics relating to geography, politics and governance, identity and – if the fourth definition is more broadly conceived – fault, blame and responsibility. Indeed, I would be tempted to add a fifth. Whilst there is recognition of giving preference to a local area (definition 1) or allowing local representatives greater control over that local area (definition 2), there is no sense of giving the local a voice at the central level ('reverse' or 'assertive' localism). For me, this is an important fifth variation.

So how does this relate to international environmental law? In a short editorial, I am unable to do justice to all of the ideas that are floating around in my mind on this theme, and indeed localism per se as a political term of art is generally located at the domestic and municipal level. Other terms usually find favour beyond the state: subsidiarity perhaps at the EU level, and ideas of nationalism, sovereignty and territoriality in international law.

But what occurs to me is that localism is indeed a valuable lens through which to consider the object and purpose of international environmental law. What is such law for? Is it to achieve a global benefit or to tackle local conditions, or to allow states in adopting such a law to take into account local circumstances? Of course, it is both. But this is where the paradox begins. International environmental law (and its lawyers) are sometimes viewed as remote, distant and detached; not invariably in touch with the reality of how the law works 'on the ground'. Thus, it is essential that international environmental law allows states to bring to the table the particularities of their locality – international environmental law would be less effective if this was not the case – but the systemic and global nature of such law is potentially undermined when, by taking into account such local conditions, the international system loses sight of the global imperatives which it is seeking to achieve.

One immediate answer might be – but wait – hasn't there been a great deal of work undertaken (and ongoing) to connect human rights and the environment? Surely, there is nothing quite like human rights to bridge the divide between the normative aspirations of international law and the everyday reality of the lived experience? To a point, this is undoubtedly true. Whereas multilateral environmental agreements have a significant role to play, they often fail to make links to local communities and their problems. By exploring how human rights can afford such protection, a bridge is thereby built between the international and the local. But, for me, this is true only up to a point. Because one needs to ask whose rights? Created and framed by who? Locally contextualised or universally applied? So yes, human rights do appear to move us forward but not as far as I think many suppose. It merely asks a similar question in a different way.

So localism and international environmental law? There is no doubt that localism can strengthen the global order, but it can also pose significant risks. Let me give four brief examples to illustrate this. The first is the UNEP Regional Seas Programme (http://www.unep.org/regionalseas/), a significant success story for international environmental law, at least in terms of state participation and the adoption of legal rules. It allows the global norms on marine protection to be localised to suit more particular conditions of say, the Caribbean, the Mediterranean and the West and East African seas.

Secondly, there is increasingly a move to engage local actors *within* the state. The Paris City Hall Declaration of Mayors and Premiers on Climate Change adopted during the 2015 Paris negotiations is an excellent example of this (http://climatesummitlocalleaders.paris/). As the Declaration rightly points out: 'Given that cities around the world are home to half the global population and their activities generate two-thirds of global greenhouse gas emissions, local and regional leaders have an increasingly important role to play in charting the course to a low carbon future'.

Thirdly, there is the role of dispute settlement in mediating between local conditions and general

international law. There is absolutely no doubt that only when international courts and tribunals truly understand the particularities of their dispute can effective resolution occur. But, of course, general international law is rarely so fine-tuned. Often it requires courts and tribunals to answer very specific questions indeed. For instance, in the famous *Pulp Mills on the River Uruguay* case between Argentina and Uruguay, decided in 2010,[1] the International Court had cause to say: 'The Court notes, with regard to the receiving capacity of the river at the location of the mill, that the Parties disagree on the geomorphological and hydrodynamic characteristics of the river in the relevant area, particularly as they relate to river flow, and how the flow of the river, including its direction and its velocity, in turn determines the dispersal and dilution of pollutants' (para 212). The Court found a way to answer these questions without resorting to detailed scientific analysis – interestingly, a form of localism itself by using domestic standards to determine environmental harm – but the very issue highlights the need for local understanding.

Fourthly, however, is where the paradox between localism and international law becomes most apparent. The Paris Agreement on Climate Change has rightly been heralded as an enormous success story (including by me). But in seeking widespread participation, the agreement has incorporated localism to a significant, and arguably unprecedented extent. In the place of binding commitments on states to reduce greenhouse gas emissions, the Paris Agreement requires states to submit nationally determined contributions (NDCs) by which they will tackle the issue. This move to NDCs is reflective of a move from a structured division in the international order, largely between developed and developing countries (reflected in the phrase 'common but differentiated responsibilities') to a more diffuse and individualistic approach, captured by the wonderful acronym: CBDRRCILDNC … common but differentiated responsibilities and respective capabilities in the light of different national circumstances.

To the extent that the Paris Agreement is already being signed and ratified by virtually every country in the world, this new approach is a resounding success. But a note of caution. As the recently updated Synthesis Report on NDCs had cause to stress: 'global aggregate emission levels in 2025 and 2030 resulting from the implementation of NDCs do not fall within the scope of 2°C scenarios' (http://unfccc.int/focus/indc_portal/items/9240.php). Where is the necessary global ambition in an individualised, local, approach? Has prioritising the local come at the expense of ensuring the collective and the global imperative?

In conclusion, my present thoughts need further refinement. But it seems to me that localism is an interesting, multi-faceted way to look at the realities and challenges of international environmental law. The systemic and structural features of the global system continue to struggle to capture and respond – but not to be captured by – local circumstances and preferences. Localism as a collection of ideas is beginning to sum up for me the paradox between necessary contextualisation and the parallel risk to cohesiveness when we seek to bridge local circumstances and global benefit. As Prime Minister Indira Gandhi said in 1972 in her speech at the Stockholm conference: 'in the hope that the opinions of each national will be kept in focus, that these problems will be viewed in perspective and each project devised as part of the whole'.

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1 Case Concerning Pulp Mills on the River Uruguay (Argentina v Uruguay) Unreported April 20, 2010 (ICJ).