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Newsletter

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**Interview with Laure Lavorel**

*International Legal Director, Broadcom,
President of the Cercle Montesquieu*

1) You are the International Legal Director of Broadcom, a company which is a leader in digital technologies, including systems security. How important is international law to Broadcom?

A distinction must be made between different functions within companies. International law, in the sense of 'public international law', is essentially the appanage of the compliance team, which is generally integrated into the legal department, although there are some exceptions. Our colleagues in the compliance department are the guardians of the application of the rules of international law, be it the fight against corruption, environmental law or human rights due diligence, to give just a few examples. This work is done in coordination with the teams that manage the international trade aspects. In an international group, clients are present on all continents and it is important for the legal department to be able to accompany commercial operations in all countries. Commercial contract law, a consensual law where party autonomy is the axis, must nevertheless, of course, comply with the mandatory rules laid down by sovereign states. Companies are keen to identify the applicable law, which sometimes involves comparative law studies to optimise the operations. Determining the method of dispute resolution is at the core of the legal department's work and varies according to the culture of the company but also to its sector of activity. The many advantages of arbitration in the context of transnational transactions no longer need to be demonstrated, whether in terms of confidentiality, impartiality or time. It is hence the preferred method of dispute settlement of a number of multinationals. The strong regulatory push in recent years reminds legal departments that mandatory national law should not be neglected, particularly in regulated industries such as energy, pharmaceuticals or finance, leading to contractual adaptations that are not necessarily chosen by the parties but rather implied by their willingness to apply binding rules of law.

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- 2) **You are the President of the Cercle Montesquieu, an association that brings together more than 480 General Secretaries, Legal Directors and Compliance Directors of private and public companies. You like to say that: "law is a weapon for conquering markets". What do you mean by this?**

In-house lawyers are confronted with innovations that follow market trends; their role is to inform commercial teams and managers when new standards are introduced. The question is that of the role of the in-house lawyer and, beyond that, the definition of the service that legal departments can provide to their companies - I like to speak of the "imbedded lawyer" to define the place of law in companies. Faced with new challenges, legal professionals should be part of project teams and work with their engineering, commercial and financial colleagues to build the company's strategy together. This is common practice in common law countries and in some European countries such as Switzerland, but it is less the case in France where lawyers are often consulted once the project has been launched. However, the legal constraints that may be linked to competition law, personal data law or any other mandatory regulation often need to be taken into account upstream of the design of a commercial strategy, or even be placed at the heart of the definition of the strategy itself.

- 3) **For 2023, companies are called upon to participate fully in the discussion on 24 topics ranging from the Anthropocene to the SDGs, international finance, taxation, to name but a few. What issues do you think we should focus on and why?**

Our world is changing and lawyers need to keep up with the technological and societal revolutions. The management of personal data is part of our concerns but remains a subject for the future; the advent of the metaverse and blockchain raises exciting questions in liability law; the reputational risk and the disappearance of the presumption of innocence caused by social networks require particular attention; ecological awareness raises questions about the loss of opportunity and the damage caused to future generations; activism, wokeism and cancel culture create injunctions and sanctions without any legal basis. Here are some topics of interest to me as they form part of our near future.

- 4) **In June 2023, we will deal with transversal subjects such as prevention, due diligence, effectiveness of the legal standard, new hard law/soft law relationship. What do you think about this? Are there any other topics you would like to be discussed?**

The issues of the effectiveness of the legal standard and the new hard/soft law relation are very useful for business practitioners. They are at the heart of the companies' concerns. In the area of dispute settlement, the question of the future of jurisdictions, whether state or arbitral, may also be raised. The echo chamber constituted by social networks has become the most biased media tribunal that democracies have known since the birth of judicial independence. The necessary slowness of a judicial system that investigates in accordance with procedural rules can no longer accommodate the tempo of the media that judges and condemns the innocent and the guilty alike without any other form of fair trial. This is a subject for sociological, political, legal and technological study that we must seize. Facebook has created its own governance body (Oversight Board) which it presents as an independent body. This is an eminently important subject for study, rich in lessons and that must be the subject of constructive criticism. The question of adapting the judicial system seems absolutely necessary to me since the judge is the guarantor of democracy.

WHITE PAPER HUMAN RIGHTS



Coordinator:

Laurence Burgorgue-Larsen,
University Paris 1 Panthéon Sorbonne (IREDIES)

Assistant/Rapporteur :

Lorenzo Nencini,
University Paris 1 Panthéon Sorbonne (IREDIES) and Florence

Steering committee :

Antal Berkes, *University of Liverpool*

Laura Clérico, *University of Buenos Aires*

Mamadou Hébié, *University Leiden*

Alioune Sall, *University Cheikh Anta Diop, Dakar*

Philippe Sands, *University College London*

Edoardo Stoppioni, *Human Rights Consultative Commission, Luxembourg*

Maria Tanyag *National University of Australia*

Françoise Tulkens, *Professor and lawyer*

3 questions to Laurence Burgorgue-Larsen

1) We have never had so many standards to protect human rights. Yet it is probably true to say that there are still many violations of these rights. The question arises as to whether these standards are effective. What do you think?

My answer will start with a *diversion* on the evolution of international law since 1945. On the one hand, we must praise the richness of contemporary international law, which has become considerably denser since the end of the Second World War. On the other hand, this process of sophistication has highlighted, as a counterpoint, the weakness, or at least the shortcomings, of its integration into national legal orders and of its misconsideration by national political and jurisdictional actors.

In this context, international human rights law is undoubtedly one of the branches of international law where the *gap* between the norm and its application is particularly wide. Reducing this gap is one of the major challenges for the years to come. This implies a change of analytical and strategic paradigm.

It is essential that international lawyers pay attention to what happens *after* a treaty is ratified; *after* a judgment is issued, so that their energy and skills also follow the internal twists and turns of the application of international law. It should be noted here that other disciplines have been more engaged in the issue of *effectiveness* analysis (such as political scientists and/or sociologists of law). Let us follow their example. Let the lawyer get out of their "bubble" and, with humility, learn from other disciplines.

In other words, from an analytical point of view, the international lawyer (specialising in human rights), should imperatively leave their comfort zone by taking the measure of what counts: the execution and, beyond, the internal impact of a norm.

This analytical big bang must be coupled with an intensification of the commitment of international activists to the implementation of the judgments they will have helped to bring about: here, their action should be more systematically combined with the internal actors of civil society. This is the second branch of the paradigm shift, the strategic branch.

2) With about 3 months to go before the publication of the white paper that you are preparing with the steering committee, can you reveal the first avenues that are taking shape?

Before trying to answer this, I would like to stress that the hearings are always a moment of rare intellectual intensity insofar as, in one hour, the speaker has to synthesise their thoughts and provide us with their

"essential content". It is a fascinating and particularly enriching hermeneutic, which has been welcomed by all the members of the Committee.

I will begin by emphasising the unanimous observation made by all the persons heard: "the World is not doing well", both in terms of national structures and the functioning of international organisations. However, this rather gloomy assessment must immediately be put into perspective, in two respects. First, history forcefully shows that humanity has known even darker periods. One has only to think of colonialism and the establishment of the *indigénat* or slavery for commercial purposes for the benefit of a few imperial powers. Second, the evolution of the protection of human rights has not ceased to be marked by steps forward, status quo, regressions and ruptures, even since the Second World War. It is therefore imperative to situate the moment we are living in the course of history.

The work that lies ahead of us is immense, both conceptually and substantively. Conceptually, we must reflect on the schools of human rights in order to reconcile them; we have the responsibility to "decentralise" ourselves so as to stop thinking solely through European and, more generally, Western glasses in order to revisit universalism; we are obliged to understand the irruption in force of the "anti-rights" movements, which cover different facets, in order to construct a counter-argument that is intelligible to all. As far as the fields are concerned, most of the themes chosen for the white papers for the 150 years of the ADI/ILA also concern the protection of human rights: from climate change to the action of multinationals, *via* the impact of the digital era on the relationship to information. Bridges should be built between each of these areas in order to understand the problems they raise in a comprehensive way.

3) You have been a judge in a constitutional court. What lessons do you draw from this experience and how does it influence your thinking on fundamental rights?

It was a fascinating experience, because dispensing justice is a huge responsibility that involves humility and dialogue. *Humility*: I discovered the constant reflections and hesitations in order to finalise a draft decision. Even in the simplest cases, there are always angles that make you hesitate for a long time before deciding. *Dialogue*: collegiality implies discussion, listening to each other and their arguments during deliberation. Depending on the personality of the judges (and their egos), the dialogue will be more or less colored with finesse and respect. The experience was therefore also a deep dive into the workings of the human soul. Being a member of a constitutional court (the Constitutional Court of Andorra), 98% of whose activity consists in examining *recurs d'empara* (in Catalan) – direct appeals for the protection of fundamental rights – has enabled me to take two elements into account. First, the constant need for justice (whatever the country and its degree of economic and democratic development) in the face of (more or less obvious) attempts by the political powers to hijack the rules of democracy. Second, the interpenetration of the domestic and international orders, which obliges the national judge to keep abreast of developments in comparative and international law (in this case the case law of the European Court). Hence the importance of the appointment process of judges...

PARTNERSHIPS

An updated list of the institutions listed having entered into a partnership with the French Branch of the International Law Association to participate in the preparatory work and discussions that will take place on the occasion of the 150th anniversary of the International Law Association (ILA) in 2023, is available at the following link:

<https://www.ilaparis2023.org/>

The Newsletter ADI/ILA 2023 n°7 will be released in June 2022.