

## **GILLES LHUILIER *Short Biography***



I. Gilles LHUILIER is professor of law -agrégé des facultés de droit- at the Ecole Normale Supérieure (ENS) Rennes. The Ecole Normale Supérieure Rennes is an elite higher education institution -a « grande école »- and a University for advanced undergraduate and graduate studies.

Visiting Professor at ESSEC Business School Paris-Singapore<sup>1</sup>, former lawyer at the Paris Bar, Fellow of the Advanced Studies Institute of Nantes, Associate Researcher at the Centre Européen de Droit et d'Économie (CEDE-ESSEC)<sup>2</sup> and at the French Research Institute on Contemporary Japan-Maison franco-japonaise (UMIFRE 19, CNRS-French Ministry of Foreign Affairs)<sup>3</sup>, he is president of Global Legal Studies between Asia and Europe, a research consortium of the French CNRS and a senior expert for the European Union especially in the African and Asian area, and for example organized and conducted international inquiry commissions.

He is currently conducting a personal research on global legal thought. This research addresses the new legal techniques at work in the world of merchants and the resulting new decentralized rules. More specifically, it focuses on the changes that international trade practices bring to old techniques such as forum-shopping (choice of the country for settlement or for supply functions according to the mandatory law), choice of law incorporated into the product (certification and labeling), alternative modes of disputes resolution (mediation and arbitration of transnational disputes on the places of production, conditionality clauses in trade agreements, Commission of Inquiry) and International Criminal Justice (international criminal law in the strict meaning or

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<sup>1</sup> <http://www.essec.edu/essec-international-business-school-in-europe-mba-programs-bba-executive-education.html>

<sup>2</sup> <http://www.cede-essec.fr/fr/equipe/index.html#professeurs>

<sup>3</sup> <http://www.mfj.gr.jp/institut/recherche/index.php>

criminal justice of common law applied to transnational companies).

The first objective of this research is a re-arrangement of the categories of the doctrine to reflect these changes, especially to contribute to the renew concept of law shopping (from incorporation to choice of law clauses, governances clauses, forum shopping...to law incorporated in a product).

The second objective is to try to think these changes in business practices in the light of the current changes in international legal thought, the so-called “global turn”. The hypothesis to verify being the merge of a new theory of globalization, the concept of *normative spaces*, who tries to renew our approach to globalization, the old concept of National Legal Order being not anymore relevant to think the « de territorialized law » of the global world. This concept of « normative space » is already sometimes used by international lawyers – without definition – in reference to legal situations beyond the national legal order or the international legal (fragmented) order. Nowadays, one of the main task of legal theory is to try to built a new theory of law in a context of globalization.

He alternates writing books on law (*Introduction to law; Corporate law; Labour law; ...*) and philosophy (*The body and its representations; Law, a novel...*), and international reports such as *Rapport Commission Européenne - Gouvernement Tchadien, Mission of assistance and technical and institutional counseling to the Commission of inquiry on the events occurred in Republic of Chad between 28 January 2008 and 8 February 2008 and theirs consequences, 2008.*

**II. G. LHUILIER** is head of Global Legal Studies Network (GLSN), the research program of the Fondation Maison des Sciences de l’Homme (FMSH) on the globalization of law, coordinator of the FMSH-GLSN research on “Extractive Activities Regulations: *Empowering lawyers and civil society*”. Extractive activities best exemplify the world economic and politic shift, to the South and East, with the emergence of new transnational players that are multinational corporations, NGOs, local populations, alongside the States and international organizations. Extractive activities are the exploration, discovery but also developing, extracting and exploiting of minerals, oil and natural gas through international Private-Public-Partnerships. This project therefore has a double objective.

Firstly, this program on extractive activities aims to widen the expertise - and the power - of lawyers and the civil society, particularly in Africa and Asia. Indeed, the big oil, gas or mining contracts are the new global economic spaces of the *world theory* that pull the economic shift toward the South or the East. They also exemplify the slowly emerging political forums named

by UN as the «world tripartite system of government»: States, multinational corporations, civil society together. However, lawyers only know very little about the technical aspects of these contracts, multinational corporations are still not very in tune with the civil society, and the civil society largely misunderstand the legal issues of the debates on the regulation of extractive activities (allocations of profits between States and multinational corporations, involvement of the transnational corporations in the development, the private- public partnership as a new method of international financing, environmental risks, transparency, local content, cross-border crisis, etc.). It's crucial to increase the understanding of those new "forums" of legal globalization.

Secondly, this program is involved in structuring this new scientific field that is global law, whether we call it « globalization law », « transnational » law or simply «global» law. By focusing on the actors / subjects (i.e. the Global Legal Studies' new topic of research) and not on the national state anymore (i.e. the traditional topic of legal sciences), the program tries to propose a new approach to the globalization of law & business, the so-called *normative spaces*. Indeed, extractive activities are a perfect « practical case » to analyze the globalization

of law, i.e. to structure international and multidisciplinary teams of researchers, to work out new analysis frames, to take part in the attempts to regulate globalization, spreading the knowledge on extractive activities by setting up trainings, e.g. the negotiation of big contracts, the creation of research networks on extractives activities.

« Extractive Activities Regulations. *Empowering lawyers and civil society* » is a project that enables us to help to structure the debates around the energy and extractive operations question especially in Africa and Asia, which is one of the major issues of the economic development and the emerging global governance. This project is at the heart of the research program on the « Mondialisation du droit – Global Legal Studies Network (GLSN) », a scientific program from the Fondation Maison des Sciences de l'Homme (FMSH-Paris). It is a question of pursuing this globalization of law that pushes a shift of law - in its' practice but also in the way we do research - from Europe and North America toward Africa and Asia through four axis: analyzing, regulating, educating, linking :

### 1. Analyzing

Extractive activities are « global social facts » that allows us to better understand the globalization of law at work. It is now a question of setting up new frames of analysis - but also of regulation - of the globalization of law by studying extractive activities. Firstly, by identifying these big contracts as a new legal dimension of the globalization: a « deterritorialized law ». Secondly, by analyzing this « deterritorialized » law that remains to be thought, a new approach of the globalisation can be elaborated : The « normative space » theory

understands global law not through the manifestations of the State anymore but through the practices of subjects: there is henceforth no state “heteronomy”, nor any autonomy of private actors who create their standards *ex nihilo*, but there is an interpenetration of several juridical levels. Extractives activities are a “normative space”, defined at the junction of law and other social sciences as a singular layout composed of three elements : techniques (1)<sup>4</sup>, aggregate of legal practices from which actors choose legal rules (2) , mostly made by states or international organisms, thereby making normative layouts into distincts synthesis for each space, by dint of scholar, professional, political speeches (3) - in short « representations » - about practices and standards that account for it and contribute to guide and justify the choices made. A multidisciplinary seminar and an editorial project gather lawyers, economists, sociologists, anthropologists, who study «cases» such as the DRC-South Africa oil contracts, the DRC-China mining contracts - the so-called «contract of the century» - , the oil pipeline construction contract between Niger, Chad, Cameroon, China, etc. These researchers are from various institutions that have drawn up a work on extractive activities: FMSH, ENS, EHESS, Paris X, etc<sup>5</sup>. A seminar on « extractive litigation » is being organized in Pointe Noir, Congo, from the 19th to the 21st of November, 2014.

## 2. Regulating

The program takes part in the thinking of the re-regulation of the extractive sector, whether it is by the « product »<sup>6</sup> regulation, such as the Dodd-Frank Act that imposes transparency and traceability, by the californian regulation on forced labour, or by the various international convention projects on the environmental risks in the oil and gas sector<sup>7</sup>. A collective research project analyze some thirty contracts to study these regulations that mix various sources: professional law, international law, *commun* and continental law, clauses combining local communities, financial institutions, *soft law* that frames oil activities, *alternative dispute resolution (ADR)*, transnational arbitration, etc... An editorial project on the drafting of international extractives contracts has more notably the aim to help the writers of such contracts - whether they are multinational oil corporations employees, or States representatives who intervene as negotiators or as *legal counsel* - but also to give the basis of the minings contracts to the civil society. In those various cases, the approach is praxeological, favoring the concrete practices of choices of standards and the representations of actors at the expense of the abstract state or intergovernmental legal rules.

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<sup>4</sup> Dupret B., (2010), « Droit et sciences sociales. Pour une re spécification praxéologique », in *Droit et Société*, p. 315

<sup>5</sup>[http://www.universitates.eu/jsberge/wpcontent/uploads/2013/06/Normes\\_Mondialisation\\_seminaire-ED.pdf](http://www.universitates.eu/jsberge/wpcontent/uploads/2013/06/Normes_Mondialisation_seminaire-ED.pdf).

<sup>6</sup>[http://hal.archives-ouvertes.fr/docs/00/84/22/77/PDF/FMSH-WP-2013-36\\_Lhuillier.pdf](http://hal.archives-ouvertes.fr/docs/00/84/22/77/PDF/FMSH-WP-2013-36_Lhuillier.pdf)

<sup>7</sup><http://www.iddri.org/Publications/Forage-en-eaux-troubles-Pour-une-regulation-internationale-des-activites-petrolieres-et-gazieres-offshore>.

### 3. Educating

Some innovative methods of teaching international business law are being experimented in - and for - the extractive sector. For example, a simulation of negotiation of oil contract between the Indonesian government and a consortium is being organized at the ESSEC Paris- Singapour, with the help of oil companies. A research for the French Ministry of Justice on these methods of teaching international business law, with the extractive sector taken as a « case study», rallies researchers from Sciences Po Paris, the ESSEC, the CNAM, the Université PARIS VIII, the ENS-Rennes, the Université du Luxembourg, the University of London, the Institute of Law of Jersey, the University of Essex, the Ecole de droit of Rio de Janeiro, the University of Nagoya. It is a question of setting up teaching programs on extractive activities that will give more space for the learner in the teacher vs taught relationship, in order to increase the power of the numerous actors of those international contracts: international oil companies, governments, NGOs...

### 4. Linking

The world of legal practice and research is progressively shifting from the North and the West to South and the Est. The program aims to increase the links between African, Asian, European or North American practitioners and researchers, filling a double void concerning the extractive industries and concerning the study of legal globalization from a practical and multidisciplinary point of view. The program enables the creation of links with institutions such as the Institutes of the UN University in Accra, Ghana, and in Yokohama, Japan, the Ifres networks, the Francje and chinese ENS network, the “Groupement d'Intérêt Scientifique” (Scientific Interest Group, or GIS) called Global Legal Studies between Asia and Europe linking the ESSEC Business School and the Centre Européen de Droit et d'Économie (CEDE), the French National Center for Scientific Research (CNRS), the French Center for Research on Japan at Maison franco-japonaise (CNRS-MAEE) in Tokyo, the French Center for Research on China (CNRS-MAEE) in Hong-Kong and Taipei, Shanghai Jiao Tong University (SJTU) through its Law and Society Center in Law School and the Institute of Advanced Studies on European Culture, Nagoya University and its Center for Asian Legal Exchange (CALE), and Global Legal Studies Network (GLSN) of the House of Social Sciences FMSH Paris...