

ICEF
International Court of the Environment Foundation
Director and Founder: Justice Amedeo Postiglione

**Draft Statute of the International Environmental Agency and the
International Court of the Environment ¹**

THE STATES PARTIES TO THIS CONVENTION

Considering the Universal Declaration of Human Rights proclaimed by the United Nations General Assembly on the 10 December 1948;

Considering that this Declaration aims at guaranteeing the universal and effective recognition and application of the right provided for in it;

Considering that the environment is one of the fundamental human rights and that life is the very basis of fundamental freedoms;

Considering that the environmental protection is, at the same time, a fundamental duty of all mankind, particularly with regard to future generations, including the utilisation of resources compatible with the needs of life in general on the planet;

Considering that the principles of the Convention on Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950 and the Protocol to the Convention signed in Paris on 20 March 1952 must be extended to the entire world because they constitute a common universal heritage and the basis for democratic, just and peaceful governments in a new international order;

Considering that Art. 13 of the United Nations Declaration on Social Progress and Development (1969), declares that “the protection and improvement of the human environment” is one of the aims in attaining social development and progress;

Considering that, under Art. 22 of the Declaration of the United Nations Conference on the Human Environment (1972) held in Stockholm, States are under a duty to “co-operate” in further developing international environmental law and, under Art. 21, have “the responsibility to ensure that activities within their jurisdiction or control do not produce damage to the environment of other States or of areas beyond the limits of national jurisdiction”;

Considering that Art. 30 of the 1974 Resolution of the general Assembly, known as the Charter of Economic Rights and Duties of States declares that all States are responsible for the protection, preservation and improvement of the environment for present and future generations;

Considering that Art. 19 of the Report on State Responsibility, approved by the International Law Commission in 1976, considers the concept of the international crime of a State as an offence against the entire International Community to be applicable to serious acts of pollution and degradation of

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the planet (serious violations of the fundamentally important international obligation to protect and preserve the human environment – “environmental crimes”);

Considering that the Third United Nations Conference on the Law of the Sea recognised the sea as “a common heritage of mankind” and set up a special International Sea-Bed Authority;

Considering the various environmental disasters that have occurred without adequate reparation for the environmental damage done: the Torrey Canyon in 1967; the Amoco Cadiz in 1978; the collision of the Atlantic Express with the Aegean Captain outside Tobago in 1979; the Exxon Valdez in 1989; Seveso in 1976; Bhopal in 1984; Chernobyl in 1986; Sandoz in 1988; the Haven in 1991 and the burning oil wells in the Gulf in 1991;

Considering that an answer must be found for objectively supranational problems (the oceans, space, the Antarctica, the Amazon, the ozone layer, the greenhouse effect, transfrontier pollution, genetic manipulation, toxic products, etc.) on the same level in terms of regulations, sanctions, and organs for prevention, management and control and that the entire International Community must assume responsibility for saving life on the earth by creating new more effective regulations and permanently structured administrative and judicial bodies;

Considering that, for this purpose, the role of existing state and international institutions must be strengthened and new organs be created for the environment on a global level:

- an International Environmental Agency within the United Nations;
- an International Court of the Environment within the United Nations.

HAVE AGREED AS FOLLOWS:

PRINCIPLES

Art. 1

Everyone has a fundamental right to the environment and an absolute duty to preserve life on earth for the benefit of present and future generations.

Art. 2

Everyone has the right of access to environmental information and the duty to provide any environmental information in his possession.

Art. 3

Everyone has the right to participate in procedures that may involve the environment, subject to the fact that the public authorities are deemed to have final responsibility with regard to the environmental decision-making processes.

Art. 4

Everyone, whether an individual or association, has the right to take legal action to prevent activities that are harmful to the environment and to seek compensation for any environmental damage.

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Art. 5

Everyone is under a duty to utilise natural resources with equity and care, by ensuring the maximum saving of energy, the minimum consumption of resources and by actively and efficiently co-operating in reducing the amount and kinds of waste produced in its recycling and reutilisation.

Art. 6

The States shall recognise and guarantee the human right to the environment, by fostering conditions that make this right effective.

Art. 7

The States are legally responsible to the entire International Community for acts that cause substantial damage to the environment in their own territory, in that of other States or in areas beyond the limits of national jurisdiction and shall adopt all measures to prevent such damage.

Art. 8

The States, in particular, shall:

- a) Adopt all policies in accordance with an equitable principle of complete compatibility with the equilibrium of the earth's ecosystem;
- b) Adopt all policies in accordance with an equitable principle for the utilisation of the earth's common resources by all people;
- c) Adopt all policies in accordance with a principle respecting the right to the environment of future generations;
- d) Prohibit all activities that may cause irreversible damage to the basic natural processes of the biosphere and, as a precautionary measure, suspend those activities whose effects cannot be determined until all such uncertainty has been removed;
- e) Take action to restore degraded ecosystems;
- f) Prevent the transfer of environmental harm and risks to other parts of the world;
- g) Prevent military action that procures irreversible environmental damage;
- h) Adopt environmental standards that have been recommended at an international level and, in their absence, other standards aimed at preventing and significantly reducing the various kind of pollution and at guaranteeing the equitable utilization of resources;
- i) Adopt procedures for environmental impact assessment with regard to legislation, planning and programming and for public and private works of great impact on the environment;
- j) Urgently implement control and monitoring systems that are global, continuous, transparent, well publicised and comprehensible to everyone;
- k) Prohibit the forms of propaganda for the manufacturing and production and products and for the utilisation of resources considered to be incompatible with the requirements of education and the right to correct and complete environmental information;

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- l) Conserve terrestrial, coastal and marine habitats together with the species of flora and fauna subject to special protection;
- m) Conserve the quality of agricultural land and related products against the excessive use of pesticides;
- n) Adopt the principle of ecological compatibility for rivers and lakes whereby they are given the capacity to resist and regenerate by requiring that productive and agricultural activities be authorised;
- o) Make the scientific and technical information necessary for protecting the environment available;
- p) Co-operate in research and monitoring and assist in cases environmental disasters;
- q) Subject economical initiatives with other States and especially with the South of the planet to environmental impact assessment;
- r) Encourage the conservation of large ecosystem through the creation of international parks and reserves, acknowledging that all of nature is a legal and economic resource and a common heritage and that national sovereignty is a duty at the service of human values.

INTERNATIONAL ORGANS

Art. 9

INTERNATIONAL ENVIRONMENTAL AGENCY

An International Environmental Agency shall be established as a permanent organ.

Legal basis

A treaty establishing the Agency and, therefore, the consent of the Governments is required.

Name

The name is important but only relatively because what counts are the competences and powers set out in the treaty establishing the Agency. It could be called:

- 1) United Nations Environmental Organization (UNEO);
- 2) International Environmental Agency (IEA);
- 3) High Authority for the Environment (HAE).

What is important is that it is part of the United Nations umbrella.

Functions

The functions of the Agency shall be:

- a. to control and monitor the state of the environment on the planet;
- b. to promote and carry out research, also with the assistance of independent experts, research centers and universities, on the actual state of the environment on the planet and on the evolution of large terrestrial, marine and atmospheric ecosystems;
- c. to plan global initiatives on environmental protection and restoration;

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- d. to manage the World Environmental Fund;
- e. to establish acceptable standards regarding polluting activities, which the single States may only make stricter;
- f. to promote any other useful initiative for environmental protection, including a vast world-wide educational campaign on the environment;
- g. to publish an Official Report once every three years on the ecological evolution of the planet.

This new Agency should take over the relative competence, powers, resources, structures, and personnel of UNEP including :

- a. Power of co-ordination outside the United Nations. The duty of the new Agency would be to establish increased collaboration with important organizations that work outside the framework of the United Nations and have become increasingly important in relation to the environment (e.g., World Bank, World Trade Organization, etc.);
- b. Power to stimulate the enforcement and better integration of international environmental law;
- c. Power to coordinate with governance bodies that work within MEAs (Multilateral Environment Agreements): in this case, the bodies belonging to some important conventions in which UNEP has given impetus would be absorbed into the Agency whilst the bodies of other conventions could opt for greater simplification and closer co-operation directed towards integration into a global system of international environmental regulations;
- d. Power to activate a “non compliance” procedure against States that fail to observe their obligations under international environmental conventions. This power is already found in some conventions (for example, the Vienna Covenant for the Protection of the Ozone Layer and the Montreal Protocol): it would involve generalizing and extending this important power, giving the new body the responsibility for it;
- e. Power of inspection and prevention in the event of accidents or disasters (using a special task force);
- f. Power to promote the friendly settlement of any disputes, especially in their early phase;
- g. Power to take action before the International Court of Justice in the Hague or an ad hoc International Court of the Environment for trans-border cases of environmental damage;
- h. Power to plan and program : with special reference to Agenda 21 and new instruments;
- i. Power to assist developing countries both legally and in relation to the use of best technology;
- j. Power to establish a permanent relationship with international civil society, avoiding the marginalization of NGOs;
- k. Power to establish a relationship with the scientific world at international level.

Art. 10

INTERNATIONAL COURT OF THE ENVIRONMENT

An International Court of the Environment shall be established as a permanent organ.

Preliminary Rulings

A national court may request the Court to give a preliminary ruling on the international or national nature of the question brought before it.

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Functions

The functions of the Court shall be:

- a. to protect the environment as a fundamental human right in the name of the International Community;
- b. to decide any international environmental disputes involving the responsibility of States to the International Community which has not been settled through conciliation or arbitration within a period of 18 months;
- c. to decide any disputes concerning environmental damage, caused by private or public parties, including the State, where it is presumed that, due to its size, characteristics and kind, this damage affects interests that are fundamental for safeguarding and protecting the human environment on earth;
- d. to adopt urgent and precautionary measures when any environmental disaster concerning the International Community is involved;
- e. to provide, at the request of the organs of the United Nations and other members of the International Community, advisory opinions on important questions regarding the environment on a global level;
- f. to arbitrate, upon request, without prejudice to its judicial role;
- g. to carry out, upon request, investigations and inspections with the assistance of independent technical and scientific bodies when there is environmental risk or damage and, ex officio, when considered necessary and urgent.

Procedure

The procedure of the Court shall provide that:

- a. the Court hearing shall be public;
- b. all parties shall have the right to a defence;
- c. the judgment shall state the reasons on which it is based and shall be final;
- d. civil remedies shall include an interlocutory or perpetual injunction, or an order directing the party against whom judgment is made to pay the costs of restoring the damaged environment, where this is possible, and, failing that, to compensation for damages, with an order to pay the relative sum into the World Environmental Fund;
- e. the enforcement of judgments shall be entrusted to the United Nations Security Council.

Procedural Rules

The Court shall draw up its own rules and determine its own procedure.

Locus Standi

The following parties may appear before the Court :

- a. individuals;
- b. non-governmental organizations and environmental associations;
- c. States;
- d. supranational organizations, such as the European Union;
- e. international organizations under the United Nations and the individual organs of the United Nations.

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Legal action by an individual or non-governmental organization or environmental association shall be subject to two conditions:

a) that a claim has been made before the national courts and has been held to be inadmissible because there is no judicial remedy under national law or has been dismissed on the merits;

b) that the claim has been filtered in terms of its admissibility, not as a matter of whether there is a cause of action, which is admitted as a general principle, but with regard to the international importance of the question raised (the same principle of inadmissibility shall be applied by the International Court of the Environment in camera and cannot be appealed against). Individuals or associations may bring an action for the violation of the human right to the environment on the grounds that they have been prevented from gaining access to information, from participating in environmental decision-making processes or from taking legal action or for serious environmental risk, harm or damage of international importance caused by any party whatsoever in violation of international law.

Sanctions

Whenever the Court finds in favour of an individual or association, it shall adopt any measures considered necessary for remedying the violated right, by ordering, in accordance with the circumstances, whatever the party, or even the State, guilty of the alleged violation is or is not required to do. If the claim by an individual or association is related to environmental damage, the judgment which orders the offender to pay the costs of restoring the damaged environment shall redress the claims of the claimant and of the International Community. If the claim for compensation for general environmental damage by an individual or association is upheld, an order shall be made in favour of the World Environmental Fund, while any claim for residual individual damage may only be made before the national courts and the claimant shall only have the right to costs before the International Court.