

# ESSAY

## A MORE EFFICIENT INTERNATIONAL LAW ON THE ENVIRONMENT AND SETTING UP AN INTERNATIONAL COURT FOR THE ENVIRONMENT WITHIN THE UNITED NATIONS

BY  
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*Editor's Note: The following Report and Final Recommendation were originally produced by an international Congress on a More Efficient International Law on the Environment and Setting Up an International Court for the Environment Within the United Nations at the National Academy of Lincei, Rome, Italy, April 21-24, 1989. Twenty-seven countries participated in the Congress. Environmental Law has chosen to publish the Report and Final Recommendation because it emphasizes the global scale of environmental issues. Furthermore, the Report's specific recommendation—creation of an International Court for the Environment—deserves attention.*

### A NEW INITIATIVE BY THE UNITED NATIONS

The United Nations role with regard to protection of the environment is not adequate against the serious and accelerated pace of environmental degradation on this planet. Until now, the

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United Nations role has been expressed by: (1) an international conference held in Stockholm in 1972;<sup>1</sup> (2) the creation of the United Nations Environment Programme (UNEP) in 1972,<sup>2</sup> under the initiative of the United Nations General Assembly with permanent members, a Secretariat in Nairobi, a Governing Council of fifty-eight Member States, an Environment Co-ordination Board, an Environment Fund, whereby the States financed about thirty million dollars each year; and (3) the creation in 1983 of the World Commission on the Environment and Development that drew up the Brundtland Report.<sup>3</sup>

#### A UNIVERSAL CONVENTION FOR THE ENVIRONMENT AS A HUMAN RIGHT

This seems the right time for the United Nations to hold a new International Conference on the Environment to draw up and approve a universal Convention for the Environment as a Human Right. The Convention should establish the principle of an individual right to the environment. The Convention should specify an individual's inalienable legal rights and establish an adequate level of information, participation, and actions necessary to maintain those rights. The Convention should also define the main obligations of the individual States. Furthermore, the Convention must identify the people responsible for promoting and protecting this human right.

#### THE CREATION OF A WORLD COMMISSION ON THE ENVIRONMENT AS A HUMAN RIGHT

A permanent World Commission on the Environment as a Human Right could be formed by distinguished legal experts as a

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1. *Declaration of the United Nations Conference on the Human Environment*, U.N. Doc. A/CONF. 48/14 (1972). For an informative summary of the Conference, see *STOCKHOLM AND BEYOND: REPORT OF THE SECRETARY OF STATE'S ADVISORY COMMITTEE ON THE 1972 UNITED NATIONS CONFERENCE ON THE HUMAN ENVIRONMENT* (1972).

2. *Institutional and Financial Arrangements for International Co-operation*, G.A. Res. 2997 (XXVII) (Dec. 15, 1972). For the full text of the resolution establishing UNEP, see L. SOHN, *INTERNATIONAL ORGANISATION AND INTEGRATION* 460 (1986).

3. *THE WORLD COMMISSION ON ENVIRONMENT AND DEVELOPMENT, OUR COMMON FUTURE* (1987).

permanent body. Members might be appointed in numbers equal to the number of States that ratified the Convention, elected by the General Assembly of the United Nations, or chosen by the Secretary General from a list presented by the individual countries. A third of the members could be chosen directly by the Secretary General of the United Nations from among independent personalities who do not represent their governments. The term in office could be six years.

The Commission should have financial support from the United Nations, a permanent Secretariat, a place for meetings, and a Chairman appointed by the United Nations. Duties of the Commission would be to examine petitions for violations against the environment as a human right, carry out investigations, and seek judgments before an International Court for the Environment.

#### THE CREATION OF AN INTERNATIONAL COURT FOR THE ENVIRONMENT

##### *Aims*

The ecology crisis concerns the whole planet—an ecosystem limited in space that accommodates life in all of its various forms. A new guarantee system is needed at the international level that can judge (in the name of mankind) violations of primary and conventional norms that concern the environment.

The creation of an International Court for the Environment as part of the United Nations is urgently needed for several reasons. Heading the list are: an increasing world population; disastrous environmental impacts due to the policies of industrialized countries toward the Third World (with the aid of the International Monetary Fund and the World Bank); attempts to exploit the Antarctic, the bottom of the ocean, and tropical forest ecosystems such as the Amazon; trans-frontier pollution threats; degradation of the ozone layer; the greenhouse effect; and desertification. Traditional clashes between the East and West are shifting to North-South conflicts. The environment, with its changing resources, becomes a dangerous cause of conflict. Thus, it is important to have new legal State liability rules and, consequently, compulsory and efficient conflict regulation procedures supported by a permanent, international authority.

Acceleration of the world ecology crisis on a limited and defined planet is accompanied by group awareness that overcomes traditional political, religious and social divisions. We now ask the United Nations not to "mediate" but to "judge" in the name of the whole of mankind, at least in the most serious cases.

### *A Legal Base*

The environment as a fundamental human right can be a legal reality at the international level because a nonwritten "primary norm" will require "recognition" and "safeguard" of the legal rights. Every law, and therefore even international law, finds its justification in the need to ensure peaceful enjoyment. This function would be impossible without ensuring those conditions essential for preserving life.

Today, even the rights of human beings to enjoy the "common services" of nature—air, surface water, the sea, vital ecological cycles of plant and animals—are being debated. An International Court for the Environment is therefore needed. According to appropriate and recognized laws, a fundamental human right, such as the environment, cannot be undefended at the international level. It bears repeating—an international forum for enforcing the human right to the environment is not an option, but an urgent need.

Human rights have the power of universality and therefore go beyond administrative, political, ideological, social and cultural barriers. Human beings are equal in space, and so one cannot conceive of protection of the environment without reflecting on this principle of equality at an international level. However, there is another fundamental feature in the environment as a human right: the time dimension. To be protected in view of the future is a human right. Every serious injury to the planet's ecosystem certainly produces effects over the intermediate and long term (following accumulation, synergism, accelerated irreversibility and other processes). This is true not only from an objective standpoint (with regard to quality and availability of resources, as well as total ecological resistance capacity of the ecosystem), but also from a subjective standpoint (with regard to future generations).

If life has inviolable rights, one certainly cannot deny future generations the right to life. Consequently, every human conscience has become a "court for the environment" when evaluat-

ing one's own behavior, other people's behavior, and the environmental degradation that is reported by the press every day.

From a moral, social, and cultural standpoint, the passage of responsibility for protecting the global environment to the legal and political phase is inevitable. An International Court for the Environment must soon be formed in order to make individuals and States respect prevention rules, as well as to force repair of ecological damage (a guarantee instrument). The court's task will be to "judge," not to "mediate," according to new international legal regulations regarding protection of the environment.

Do not be distracted by the word "court." There are already courts for the environment in individual countries.<sup>4</sup> The efficiency of their judgment is limited, however, in relation to the nature and size of the phenomenon, which is objectively international.

Having a civil defense is not enough. We must have an International Court for the Environment that draws moral and legal strength not from countries, but from individuals who are the real holders of a universal human right. People cannot "delegate" defense tasks to bureaucratic organizations. They must have a court at their disposal that has the power to impose itself on all individuals and countries because it judges in the name of the international community—i.e., for the whole of mankind today and for future generations.

Technically speaking, setting up an International Court for the Environment as a special court according to Article 26 of the Charter of the International Court of Justice<sup>5</sup> would be impossible. Nevertheless, an ad hoc court is preferable. An ad hoc court would specialize in environmental issues, both with regard to countries and to petitions by individuals. There would be no contradiction in the existence of the International Court of Justice (a judge for countries on all other matters)<sup>6</sup> and an International Court for the Environment (a judge for countries in applying pri-

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4. For example, the European Economic Community has established a Court of Justice that has the power to apply and carry out legislation on the environment. *Protocol on the Statute of the Court of Justice of the European Economic Community*, 22 O.J. EUR. COMM. (No. L 291/9) (1979).

5. STATUTE OF THE INTERNATIONAL COURT OF JUSTICE art. 26, para. 1. *See also* U.N. CHARTER art. 92-96.

6. *See* U.N. CHARTER art. 92-96; STATUTE OF THE INTERNATIONAL COURT OF JUSTICE art. 1-70.

mary and secondary norms to the environment, as well as adjudicating human rights to the environment and guaranteeing these rights in the case of individual petitions).

#### THE CREATION OF AN INTERNATIONAL AGENCY

Some governments have already suggested creation of an international agency to the United Nations. This proposal should be supported since an administrative organization is necessary for control, management (including funding), and planning.

#### A DEFINITE DEVELOPMENT OF A POLICY ON ENVIRONMENTAL INFORMATION ON AN INTERNATIONAL BASIS

Development of an international policy on environmental information is a very important aspect. In theory, information is recognized as a right. In practice, however, there are many political and economic obstacles to exercising that right. As correct, complete, and timely information on the environment becomes more and more widespread by one-line computer systems, permitting access to all citizens and not just experts, the obstacles to information will decrease. Public organizations will have a great responsibility in this matter—they will not be able to “control” environmental phenomena without informed participation on the part of citizens. Therefore, developing the most adequate initiatives for setting up data banks at international, national and local levels is advisable. The example offered by the Italian Supreme Court with its environmental data bank network merits close attention and further development of the legal principles involved.

#### FINAL RECOMMENDATION

The international *Congress on A More Efficient International Law on the Environment and Establishing an International Court for the Environment Within the United Nations System* promoted by the meeting of experts from thirty countries and from all the continents convened by the Italian Supreme Court in Rome, April 21-24, 1989.

The Congress considered:

- 1) the ecological crisis is accelerating at an alarming rate and that serious incidents are threatening the basic resources of the

planet;

2) that new problems such as those of the sea, space, the Antarctic, tropical forests, the ozone layer, dangerous products, nuclear risk, trans-frontier pollution, genetic engineering, the loss of many animal and plant species (genetic diversity), which can be seen as international are coming to worldwide attention and these cannot be solved by the institutions of individual countries;

3) that the environment, as one of the basic human rights, is a necessary legal reality at the international level;

4) that the environment with its resources must not be allowed to become a dangerous source of conflict;

5) obligatory legal procedures for preventing and regulating any conflict effectively must be found and endorsed by the competent international authorities.

The Congress requests:

1) The drafting of a universal International Convention proclaiming the duty of all States to conserve and protect the environment, both within and outside the limits of international jurisdiction;

2) the creation of an international body within the United Nations system to guarantee the supervision, planning, and management of the world environment;

3) the appointment of a United Nations High Commissioner for the Environment with adequate support facilities;

4) the creation by the United Nations of an the International Court for the Environment, which will be accessible to States, United Nations organs, and private citizens. The court should have the power to decide on the infringements of the right to the environment, international ecological violations, and possibly the issues to be dealt with in an International Convention on the Environment;

5) the creation of an ad hoc Commission to prepare the basis for this court, its competence, jurisdiction, relationship to the United Nations, and its composition;

6) the preparation within six months by the Commission of a detailed proposal for submission at a new meeting which will consider the creation of the International Court for the Environment.

The ad hoc Commission will consist of fifteen members chosen for their personal standing, ensuring as far as possible an adequate geographical representation;

7) the development of an environmental information policy on an international level.