

ICEF

International Court of the Environment Foundation

Director and Founder: Dr. Amedeo Postiglione

The ICEF Project, a brief overview

The International Court of the Environment Foundation (ICEF) is an internationally recognised NGO accredited with the United Nation (ECOSOC and FAO) and with the Council of Europe, which was officially registered in Rome as a non profit foundation on 22 May 1992, with latest amendments on 4 July 2003.

Who is Icef's Founder and Director?

ICEF's Director & Founder: Hon. Justice *Amedeo Postiglione*, Honorary President Adjoint of the Italian Supreme Court of Cassation; Vice-President, EU Forum of Judges for the Environment.

Where is Icef represented?

National and Regional Organising Committees and an International Network of Experts supporting the ICEF Project for a Global Environmental Governance work in close contact with ICEF in Rome.

The Development of the Project for an International Court of the Environment

The Project for an International Court for the Environment is essentially known by NGOs, Governments and Parliaments.

The Fundamental Characteristics of the New Institution

A real jurisdiction: for the legal solution of the conflicts concerning the global problems of the environment having international relevance; a kind of "specialised" jurisdiction with specific and interdisciplinary competence; elimination of the characteristic of "speciality" of the jurisdiction in order to maintain unity within the international legal system and not to clash with the acknowledged role of the Court of Justice in The Hague; a mandatory and not merely voluntary jurisdiction (at least in cases to be defined in the future) and the deriving *erga omnes* validity of the decisions.

The advantages of the New Institution

- *Realism*. It is acknowledged that there exist environmental conflicts deriving from transfrontier pollution, disasters and serious accidents, the misuse of resources when infringing specific rules and that an alternative to violence is to bring those conflicts originated in the country and in the society before a legal international forum ensuring protection.
- *Effectiveness*. The existing mechanisms of guarantee are useful but inappropriate since they are voluntary and not mandatory and simply bilateral: mediation, conciliation, arbitration, etc.
- *Unity*. The environment is considered as unitary terrestrial ecosystem and therefore integrated so that the jurisdiction cannot deal only with one field: Tribunal of the Sea, Tribunal for the Climate, etc..
- *Social Access*. This is the new qualifying point at the cultural and political level: it has been acknowledged that the environment is not simply a problem of the States or between the States but it is mainly a social matter so that only the model for the protection of the human rights can bring the social cases before an institution ensuring protection. The access must

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be given also to individuals and NGOs thus implementing the human right to the environment - with possible filtering mechanism so as to avoid the impasse of the system.

- *A Real Case Law.* The jurisdiction requires a body to apply the rules and establish continuity in the case law through the examination of the cases.
- *The answer to the new conventions.* The framework conventions on sea, biodiversity, climate, deforestation, etc. are objectively global and cannot be implemented only through bilateral instruments between the States;
- *The answer to some conventions underlining the human right to the environment.* These are the Aarhus Convention on environmental information intended as the right of every human being all over the world; the Espoo Convention on information and participation of persons for transfrontier projects (Evaluation of the Environmental Impact) etc..
- *Implementation of the principle of responsibility for transfrontier environmental damage.* It is a primary principle of the acknowledged international law which has not been applied yet since there is not a Court able to examine the single cases and establish an appropriate case law;
- *Balance.* Since its very beginning the inspiring philosophy of the ICEF Project has envisaged a balanced and parallel progress of the international system, also with supra-national administrative organs, such as a High Authority or Agency besides a judicial Body so as to avert fundamentalist temptations and unfair legal actions;

International environmental crimes

The philosophy of the new institution is not focused on the criminal aspect. For a matter of consistency the International Criminal Court, with regard to crimes perpetrated by individuals against humanity, will be also concerned with the ecological crimes as defined by law and committed by individuals, whereas the International Court of the Environment deals with the civil aspects of international environmental wrongs and usually with the implementation of the existing conventions as well, at least for the obligations having specific contents.

Already existing institutions

The proposal for an International Court of the Environment as independent body does not collide in principle with the institutions already in existence (the Permanent Court of Arbitration of The Hague and the International Court of Justice of The Hague) but provides some integration of their role: the new institution is not a "special" but a "specialised" tribunal and so it supplements and does not break the unity of the international legal system.

Conclusions

The acceleration of the global ecological crisis leads to a broad consensus of the States for the new institution and allows a response in terms of legality and balance to the globalisation of the world economy and the serious imbalances in the exploitation of the common resources of the Planet. Besides, the importance given to a human right (with its dynamic contents about information, participation and access) allows a very innovative experience in the field of jurisdiction in the name of the environment through a new institution: the International Court of the Environment which becomes in the meantime the Court for a human right from the point of view of procedure and the Court for the protection of the environment from an objective point of view with regard to the implementation of the norms as such, the prevention of damage and its reparation in the interest of all peoples.