

## THE CASE FOR AN INTERNATIONAL COURT OF THE ENVIRONMENT



## **THE CASE FOR AN INTERNATIONAL COURT OF THE ENVIRONMENT**

*by*

Deirdre Exell Pirro  
International Relations Officer  
ICEF  
International Court of the  
Environment Foundation  
Rome (Italy)

e-mail: [d.pirro@icef-court.org](mailto:d.pirro@icef-court.org)  
[www.icef-court.org](http://www.icef-court.org)

## THE CASE FOR AN INTERNATIONAL COURT OF THE ENVIRONMENT

### Introduction

The United Nations Conference on Sustainable Development (UNCSD), known as the Rio+20 Conference, will take place in Brazil on 20 to 22 June 2012 to mark the 20th anniversary of the 1992 United Nations Conference on Environment and Development (UNCED), in Rio de Janeiro, and the 10th anniversary of the 2002 World Summit on Sustainable Development (WSSD) in Johannesburg. It will be a high-level Conference with the presence of Heads of State and Government and other representatives. The Conference will result in a focused political document of steps forward for the global environment.

Although it is a Conference and not a Summit, meaning it is up to each Member State to decide on at what kind of level they wish to participate, its objective is to secure renewed political commitment for sustainable development, assess the progress to date and the remaining gaps in the implementation of the outcomes of the major summits on sustainable development, and also to address new and emerging challenges.

The aim is that Rio+20 should be a blueprint for a coherent pursuit of sustainable development, including:

- to renew political commitment for sustainable development
- to mobilise the entire UN system in support of sustainable development. This requires strengthening of the three pillars - including social and economic, not just environmental
- to strengthen the Commission on Sustainable Development
- to strengthen UNEP
- to draft guidelines on the green economy
- to propose actionable commitments in financing and technology cooperation.

The Conference will, therefore, focus on two major themes:

- a green economy in the context of sustainable development and poverty eradication
- the institutional framework for sustainable development

It will also look at other emerging issues – critical issues that should be incorporated into the sustainable development agenda along with making a review of existing commitments and scrutinizing the progress made over the past twenty years will also be made.

The **International Court of the Environment Foundation (ICEF)**, an internationally recognised Non-Governmental Organisation (NGO) accredited with the United Nations (ECOSOC and FAO) and with the Council of Europe, officially registered in Rome as a non profit foundation on 22 May 1992 with headquarters in Rome (Italy), plans to participate at Rio+20 as it did at the first Rio Conference and in all the other major Conferences held over the last twenty years. Wishing to make its unique contribution to the debate, particularly with regard to institutional reform, ICEF will

---

1 ICEF's Statute was last amended on 4 July 2003.

## THE CASE FOR AN INTERNATIONAL COURT OF THE ENVIRONMENT

publish a series of reports, including this report, on its website<sup>2</sup> in the period running up to the Conference.

This report is one of them. Firstly, it will review what is happening at the level of national environmental courts and tribunals before moving on to analyse proposals for a new international environmental agencies and finally it will put forward what we believe to be the best model for a world environmental court.

---

<sup>2</sup> <http://www.icef-court.org/>

## THE CASE FOR AN INTERNATIONAL COURT OF THE ENVIRONMENT

### Chapter 1. National Environmental Courts

In April 2010, The Access Initiative<sup>3</sup> of the World Resources Institute (WRI)<sup>4</sup> in Washington, D.C published the results of a ground breaking global comparative study on Environmental Courts and Tribunals (ECTs) entitled *Greening Justice: Creating and Improving Environmental Courts and Tribunals*<sup>5</sup>. Written by a husband and wife team, George (Rock) Pring, Sturm College of Environmental Law at the University of Denver in the United States, and Catherine (Kitty) Pring, a professional mediator, as part of the multidisciplinary University of Denver Environmental Courts and Tribunals (ECT) Study<sup>6</sup> whose focus was to determine how ECTs can enhance the human rights to a healthy environment as well as access to 'green' justice at national, regional, and local levels across the world.

Defined in the study as 'government judicial or administrative bodies empowered to hear and resolve environmental, natural resources, land use, and related disputes', there has been a boom in ECTs over the last 30 years. From their slow beginning last century with the creation of the Nature Protection Board, the first dedicated environmental court set up in Denmark in 1917, their number has now rapidly increased to 350 ECTs in 41 countries, 170 of these created since 2005. In fact, with ECTs can be found in Australia, New Zealand, Brazil,



Sweden, and Canada with important steps recently having been taken in developing countries like India, China which created 15 environmental courts in 2008 and 2009, the Philippines with its network of 117, as well as other countries in Latin America and Africa. In the United States, there are federal courts at the EPA and the Interior Department, courts in Vermont and Washington at State level and many county and city environmental courts.

Findings of the study are based on two years of desk research and more than 150 interviews with experts from around the world. Comparative information was gleaned from members of the judiciary, prosecutors, court staff, government officials, environmental lawyers, members of civil society and academics.

The Prings define 4 major types of ECTs that vary, in their view, 'chiefly in independence, competence, jurisdiction, and cost':

- specialized courts
- specialized Court Chamber
- tribunals that may be based on four other models:
  - independent tribunals

---

<sup>3</sup> <http://www.wri.org/project/access-initiative>

<sup>4</sup> <http://www.wri.org/>

<sup>5</sup> <http://moef.nic.in/downloads/public-information/Greening%20Justice.pdf>

<sup>6</sup> <http://www.law.du.edu/index.php/ect-study>

## THE CASE FOR AN INTERNATIONAL COURT OF THE ENVIRONMENT

- 'captive' tribunals found within environmental regulating agencies
  - appeals boards
  - quasi-independent tribunals found within different executive branch agencies
- ombudsmen and other specialized forums<sup>7</sup>.

They have also identified 12 key characteristics of ECTs which they call the 'building blocks' or design decisions. These contribute to making these courts work effectively, the authors provide a valuable handbook of 'best practices' for capacity building in developed, developing and least developing countries by offering a range of options and alternatives within each building block<sup>8</sup>.

Unfortunately, only national, state/provincial and municipal jurisdictions are taken into consideration as the authors believe that international or multinational ECTs are 'presently not a particularly promising terrain'<sup>9</sup>.

It will, however, be the task of this report is to put pessimism to one side and to explore this seemingly un-promised land in the hope of making the case for two new institutions at global level:

- a specialised International Agency for the Environment (or Authority, or Organisation);
- an International Court of the Environment.

---

<sup>7</sup> op. cit. pp. 21-26.

<sup>8</sup> op. cit. p. 20

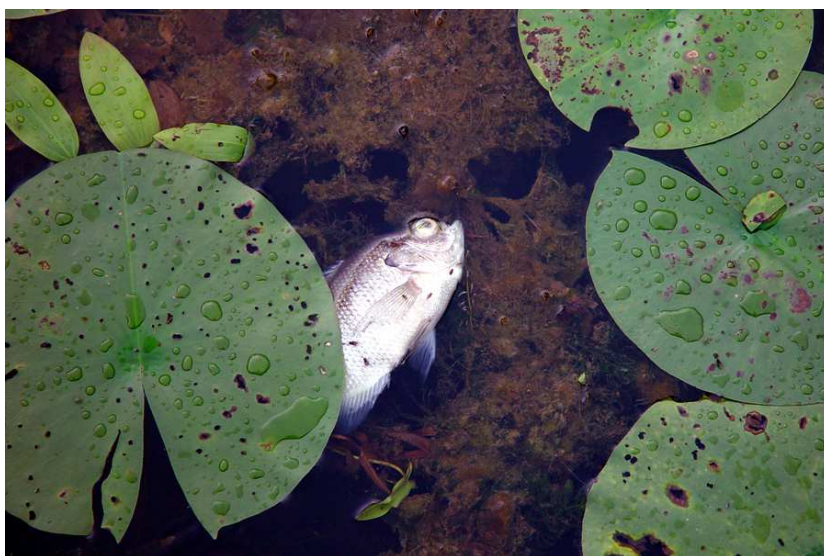
<sup>9</sup> Pring G. and Pring C., *Specialized Environmental Courts and Tribunals at the Confluence of Human Rights and the Environment*, Oregon Review of International Law, Vol. 11, 2009, No.2, p. 301.

## THE CASE FOR AN INTERNATIONAL COURT OF THE ENVIRONMENT

### Chapter 2. An International Agency for the Environment

The **International Court of the Environment Foundation (ICEF)** has been one of those organisations calling for environmental institutional reform at global level. For over twenty years, ICEF has promoted steps for an international holistic and better balanced governance of the environment at both the political-administrative and jurisdictional levels.

By “governance”, it means institutions and mechanisms for environmental protection and dispute resolution. So along with other NGOs and concerned individuals, ICEF believed its call for greater environmental information, participation and, above all, access to justice would be answered when the 1992 UNSDC was convened. Together with many others, it based its great expectations on the 27 Principles set out in the Rio Declaration on Environment and Development after the Rio Conference which reaffirmed the Declaration of the United Nations Conference on the Human Environment<sup>10</sup>, adopted at Stockholm on 16 June 1972, and sought to build upon it. In particular, it placed its reliance on Principle 10 of the Declaration<sup>11</sup> which reads as follows:



*Principle 10  
Environmental issues are best handled with participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness*

*and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided.*

In fact, in the run up to the 1992 Rio Conference, ICEF drafted A Project for an International Court of the Environment in which a permanent International Agency for the Environment was to be a key element. It was not concerned whether such a body should be called the International Environmental Agency (IEA) or the United Nations Environmental Organization (UNEO) or the High Authority for the Environment (HAE) what mattered was the competence and powers of such a body.

At the very least, ICEF proposed that the functions of such an Agency should be:

- to control and monitor the state of the environment on the planet

---

<sup>10</sup> <http://www.unep.org/Documents.Multilingual/Default.asp?documentid=97&articleid=1503>

<sup>11</sup> <http://www.unep.org/Documents.Multilingual/Default.asp?documentid=78&articleid=1163>

## THE CASE FOR AN INTERNATIONAL COURT OF THE ENVIRONMENT

- to promote and carry out research, also with the assistance of independent experts, research centres and universities, on the actual state of the environment on the planet and on the evolution of large terrestrial, marine and atmospheric ecosystems
- to plan global initiatives on environmental protection and restoration
- to manage the World Environmental Fund
- to establish acceptable standards regarding polluting activities, which individual States may only make stricter
- to promote any other useful initiative for environmental protection, including a vast world-wide educational campaign on the environment
- to publish an Official Report once every three years on the ecological evolution of the planet
- to have co-ordination powers within the United Nations

The model also proposed that this new Agency should take over the relative competence, powers, resources, structures, and personnel of UNEP including:

- power of co-ordination outside the United Nations. The duty of the new Agency would be to establish increased collaboration with important organisations that work outside the framework of the United Nations and have become increasingly significant in relation to the environment (e.g., World Bank, World Trade Organisation, etc.)
- power to stimulate the enforcement and better integration of international environmental law
- power to coordinate with other governance bodies that work within MEAs (Multilateral Environment Agreements) of which over 500 are currently in existence: 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
- 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 (e.g., the Vienna Covenant for the Protection of the Ozone Layer<sup>12</sup> and the Montreal Protocol on Substances that Deplete the Ozone Layer<sup>13</sup>). It would involve generalising and extending this important power, giving the new body responsibility for it
- power of inspection and prevention in the event of accidents or disasters (using a special task force)

---

12 The Vienna Convention for the Protection of the Ozone Layer is a Multilateral Environmental Agreement. It was agreed upon at the Vienna Conference of 1985 and entered into force in 1988. It has been ratified by 196 states (including all United Nations members as well as the Holy See and the European Union) whereas the original Montreal Protocol was agreed on 16 September 1987 and entered into force on 1 January 1989. Together they are the most widely ratified treaties in United Nations history: [http://montreal-protocol.org/new\\_site/en/index.php](http://montreal-protocol.org/new_site/en/index.php)

13 The Implementation Committee set up under the Protocol to review annual reports from parties and develop measures that could be used in cases of non compliance has been followed as a precedent in other environmental agreements, including the UNECE Convention on Long-Range Transboundary Air Pollution and its Protocols (<http://www.unece.org/env/lrtap/>), the UN ECE Åarhus Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (<http://www.unece.org/env/pp/welcome.html>), and the Kyoto Protocol to the United Nations Framework Convention on Climate Change ([http://unfccc.int/kyoto\\_protocol/items/2830.php](http://unfccc.int/kyoto_protocol/items/2830.php)).

## THE CASE FOR AN INTERNATIONAL COURT OF THE ENVIRONMENT

- power to promote the friendly settlement of any disputes, especially in their early phase
- power to take action before the International Court of Justice in the Hague or an ad hoc International Court of the Environment for transborder cases of environmental damage
- power to plan and programme with special reference to Agenda 21 and new instruments
- power to assist developing countries both legally and in relation to the use of best technology
- power to establish a permanent relationship with international civil society, avoiding the marginalisation of NGOs
- power to establish a relationship with the scientific world at international level.

This was indeed an ambitious model and one that has been waiting a long time to come to fruition. However, recently, views have changed on exactly what is required in order for the international system of governance to meet the challenges before it.

At the United Nations General Assembly, on 23 September 2003, **French President Chirac** first called for the creation of a United Nations Environment Organization (UNEO) based on the present United Nations Environment Programme (UNEP). Its objective would be to strengthen the effectiveness, efficiency and coherence of international environmental governance. It would also pursue another three aims, namely:

- to give more political weight to international environmental action
- to make this action more coherent
- to allow developing countries to devise and implement their national environment policies.

Following the publication of Fourth Assessment Report of the IPCC<sup>14</sup> in February 2007, President Jacques Chirac repeated this when he read out the **Paris Call for Action** after a two-day conference at the Elysee Palace. In it, he stated that '*we must realize that we have reached a point of no return, and have caused irreparable damage*' through global warming and that '*we are coming to realize that the entire planet is at risk, that the well-being, health, safety, and very survival of humankind hangs in the balance*'. With the support of 46 countries but not that of the United States, China, Russia, and India, the top four emitters of greenhouse gases, the call was made for the United Nations Environment Programme (UNEP) to be replaced by a new and more powerful United Nations Environment Organization (UNEO), to be modelled on the World Health Organization. Its objective would be to combat threats like global warming, water shortages and the destruction of biodiversity and to urge the '*massive international action to face the environmental crisis*'.

After the Paris meeting, a **Group of Friends of the United Nations Environment Organisation (UNEO)**<sup>15</sup> was formed to support the upgrade of UNEP into a UNEO within the context of reform at the United Nations. The Group is presently made up of 53 governments – 26 of which are from the South.

When, in 1972, UNEP was set up as the only institution devoted exclusively to the environment, the

---

14 [http://www.ipcc.ch/publications\\_and\\_data/publications\\_and\\_data\\_reports.shtml](http://www.ipcc.ch/publications_and_data/publications_and_data_reports.shtml)

15 [http://www.reformtheun.org/index.php?searchword=uneo&ordering=&searchphrase=all&option=com\\_search](http://www.reformtheun.org/index.php?searchword=uneo&ordering=&searchphrase=all&option=com_search)



## THE CASE FOR AN INTERNATIONAL COURT OF THE ENVIRONMENT

global environmental crisis had not yet accelerated to the point it has reached today. It has been faced with, amongst others, the following problems:

- as a subsidiary Programme rather than Specialised Agency of the United Nations like the World Trade Organisation (WTO) or World Health Organisation (WHO), its political authority from the outset has been weak
- its annual budget is too low to tackle the increasing number of issues it has to deal with, being as it is too reliant on the voluntary contributions of UN member states
- situated in Nairobi, Kenya, its location has been removed from the centres of political power.

However, following the 58th session of the UN General Assembly, the Member States of the European Union also made a proposal to upgrade UNEP to a UNEO. Formally adopted by the EU Council of Environment Ministers in June 2005<sup>16</sup>, a UNEO would build on the current UNEP, continue to be located in Nairobi and would have more stable funding. It would strengthen International Environmental Governance (IEG) within the ambit of ongoing steps being taken to reform the UN and support the recommendations adopted in UNEP's Cartagena process<sup>17</sup>. This was reiterated at UNEP's Governing Council meeting of February 2007.

Once again reiterating the need to establish an UNEO, on 26 September 2007, French Foreign Minister Bernard Kouchner addressed civil society and business community representatives on the topic of IEG at an informal meeting in New York, US, hosted by the UN Non-Governmental Liaison Service (UN-NGLS). The aim of the meeting was for participants to share their visions on the way civil society and the private



sector could engage in the formulation of a new IEG architecture. Kouchner suggested that a formal working group within the UN General Assembly (UNGA) be formed to advance this matter and clearly stated that *'the days are over when diplomats ran the world's affairs among themselves, NGOs need to continue working in their essential role of warning and prodding public opinion and governments'*. He also made it clear that governments need to establish *'transparent, inclusive and participatory decision-making processes'* at both national in international levels so they can work within the spirit of the Aarhus Convention<sup>18</sup>.

16 [http://www.consilium.europa.eu/uedocs/cms\\_data/docs/pressdata/en/ec/85349.pdf](http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/85349.pdf)

17 <http://www.unep.org/environmentalgovernance/LinkClick.aspx?fileticket=hl-CoD9G1cY=&tabid=341&language=en-US>

18 <http://www.un-nxls.org/IMG/pdf/ReportmtgavecKouchner260907.pdf>

## THE CASE FOR AN INTERNATIONAL COURT OF THE ENVIRONMENT

Although the debate has been long, this brought the number of nations strongly supporting the idea of upgrading UNEP to a new international environmental agency, a UNEO, to 50. Clearly, the impetus towards its institution is increasing<sup>19</sup>.

It came even closer following a debate which took place during the sitting of 28 September 2011, when the **European Parliament** adopted by 449 votes to 103 with 45 abstentions a resolution tabled on behalf of the Committee on the Environment, Public Health and Food Safety on developing a common EU position ahead of the United Nations Conference on Sustainable Development (Rio+20)<sup>20</sup> to be held in Rio de Janeiro in June 2012. As the European Parliament wanted to ensure that there is a strong and unified EU position in terms of governance, it placed emphasis on the following:

*98. Stresses the urgent need to improve sustainable development governance;*

*99. Takes the view that UNEP needs to be strengthened inside the UN system, for example by transforming UNEP into a UN Specialized Agency (such as the ILO), as this would be the best way forward to improve international environmental governance and make progress towards global sustainable development; refers in this context however to all options identified by the Helsinki-Nairobi outcome;*

*100. Calls for the establishment, under the auspices of UNEP, of a dedicated panel of scientists to be modelled on the International Panel on Climate Change and tasked with reviewing and assessing cross-sectorally the most recent scientific, technical and socio-economic information produced worldwide relevant to the understanding of biodiversity and sustainability;*

[omissus]

*105. Calls on the Rio+20 Summit to strengthen the engagement of the key stakeholders, including the private sector; underlines that business and civil society, and in particular NGOs, social movements and indigenous communities, need to play a prominent role;*

*106. Underlines the importance of business and civil society working together within developing and developed countries in order to deliver tangible results;*

*107. Stresses the importance of involving citizens; calls for awareness raising and the provision of more information on sustainable consumption, and for incentives to be introduced and promoted in order to change values and behaviour and facilitate responsible decisions by both citizens and industries.*

With time now rapidly bringing us closer to the United Nations Conference on Sustainable Development to take place in Rio de Janeiro, Brazil, from 20 to 22 June 2012, thereby marking twenty years since the 1992 Earth Summit, also held in Rio, a policy document was recently been released.

---

<sup>19</sup> An excellent report on arguments for establishing a United Nations Environment Organisation can be found in Biermann, F., *Reforming Global Environmental Governance: The Case for a United Nations Environment Organisation (UNEO)*, published by Sdg2012, the Stakeholder Forum's Programme on Sustainable Development Governance towards the UN Conference on Sustainable Development in 2012 (UNCSD), [http://www.stakeholderforum.org/fileadmin/files/WEO\\_Biermann\\_FINAL.pdf](http://www.stakeholderforum.org/fileadmin/files/WEO_Biermann_FINAL.pdf)

<sup>20</sup> <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&language=EN&reference=P7-TA-2011-0430>

## THE CASE FOR AN INTERNATIONAL COURT OF THE ENVIRONMENT

On 10 January 2012, the co-chairs of the UN Rio+20 ‘Earth Summit’ Preparatory Committee presented a 19-page zero draft outcome document entitled ‘*The Future We Want*’<sup>21</sup>. This document opens with the vision and renewal of political commitments on sustainable development, followed by a discussion of the major themes of the conference and provides a framework for action. As mentioned earlier, there are two key themes, the first of which is:

- a green economy in the context of sustainable development and poverty eradication

No countries are there yet, but several, both developing and developed countries, have made significant efforts to green their economies such as Costa Rica, the Maldives, Denmark, and the Republic of Korea. However, other large economies have all made strides in this respect like Brazil, China, India, Indonesia, and South Africa. The financial cost for shifting to a green economy requires an investment amounting to some 2 per cent of GDP per year for the next 40 years. This means developing countries would need easy financing for the transition to a green economy, as well as of easy access to technology.

Two possible conventions could come out of the Summit supported by stakeholders, related to the Green Economy:

- a convention on Corporate Accountability, possibly bringing together the new ISO 260000 standard and the OECD guidelines; and
- a convention on Principle 10 of the Rio Declaration: access to information, participation and justice in the area of environment.

The second key theme and the one of principal interest to ICEF, is:

- the institutional framework for sustainable development

This, in other words, relates to international environmental governance. There are several options for institutional reform are on the table, including upgrading UNEP to specialized agency but no consensus has yet emerged on any particular option and the UNCSD will also consider role of bodies such as ECOSOC and the Commission on Sustainable Development.

The outcome draft document has, in fact, proposed a Commission on Sustainable Development, or the transformation of this Commission into a Sustainable Development Council as follows:

*49. We reaffirm the role of the Commission on Sustainable Development as the high level commission on sustainable development in the United Nations system. We agree to consider options for improving the working methods, the agenda and programme of work of the Commission to better facilitate, promote, and coordinate sustainable development implementation, including measures to ensure more focused, balanced and responsive engagement with a more limited set of issues, and enhanced implementation of its decisions. We also agree to consider means to enhance the review function of the Commission, including through a voluntary review process.*

OR

*Sustainable Development Council*

*49 alt. We resolve to transform the CSD into a Sustainable Development Council that will serve as*

---

<sup>21</sup> <http://www.uncsd2012.org/rio20/index.php?page=view&type=12&nr=324&menu=23#IVb>

## THE CASE FOR AN INTERNATIONAL COURT OF THE ENVIRONMENT

*the authoritative, high-level body for consideration of matters relating to the integration of the three dimensions of sustainable development*

*49 alt. bis The work of the Council should be based on fundamental documents on sustainable development such as Agenda 21, the Rio principles and related outcomes. The Council should, inter alia, fully carry out the functions and mandates of the Commission for Sustainable Development. It would be guided by the need to promote integration of the three pillars of sustainable development, promote effective implementation at all levels and promote effective institutional coherence. It should help in enhancing the involvement of all stakeholders, particularly major groups, in the follow-up of Rio+20.*<sup>22</sup>

It also suggested strengthening the United Nations Environment Programme (UNEP). In Part IV of the document dedicated to the Institutional Framework for Sustainable Development, Section C looks at UNEP, specialized agency on environment proposal, IFIs, United Nations operational activities at country level and states:

*50. We reaffirm the need to strengthen international environmental governance within the context of the institutional framework for sustainable development, in order to promote a balanced integration of the economic, social and environmental pillars of sustainable development, and to this end:*

*51. We agree to strengthen the capacity of UNEP to fulfil its mandate by establishing universal membership in its Governing Council and call for significantly increasing its financial base to deepen policy coordination and enhance means of implementation.*

OR

*51 alt. We resolve to establish a UN specialized agency for the environment with universal membership of its Governing Council, based on UNEP, with a revised and strengthened mandate,*



*supported by stable, adequate and predictable financial contributions and operating on an equal footing with other UN specialized agencies. This agency, based in Nairobi, would cooperate closely with other specialized agencies.*

*52. We stress the need for a regular review of the state of the planet and the Earth's carrying capacity and request the Secretary-General to coordinate the*

*preparation of such a review in consultation with relevant international organizations and the UN system.*<sup>23</sup>

---

22 op.cit.

23 op. cit.

## THE CASE FOR AN INTERNATIONAL COURT OF THE ENVIRONMENT

In addition, the draft outcome document stated that:

*58. We agree to take steps to give further effect to Rio Principle 10 at the global, regional and national level, as appropriate.*

At this point, all we can do is to wait and see what decisions will be made in relation to the first institutional reforms to be made regarding IEG in the last forty years. Will the the governments present, with the input of other stakeholders, including NGOs, opt for a specialised international environmental agency in June 2012 in Rio de Janiero? Or will they hopefully go even further by not only implementing and strengthening existing tools but also by taking positive action in developing new ones?

Let us hope that their choices are the right ones for the sustainability of life on earth and for the sake of future generations.

## THE CASE FOR AN INTERNATIONAL COURT OF THE ENVIRONMENT

### Chapter 3. An International Environmental Court

Nothing in the United Nations' Charter which was signed on 26 June 1945, in San Francisco, at the conclusion of the United Nations Conference on International Organization, and came into force on 24 October 1945, prevents the establishment of an independent court with special responsibilities. In fact, Article 95 of the Charter provides as follows:

*Nothing in the present Charter shall prevent Members of the United Nations from entrusting the solution of their differences to other tribunals by virtue of agreements already in existence or which may be concluded in the future<sup>24</sup>.*

Therefore, Article 95 of the Charter does not prevent Member States of the UN from submitting disputes to other courts for settlement although an agreement within the meaning of the Article would be required which would include the rules of procedure.

In order to have an idea of the number of international courts and tribunals already in existence, a Project on International Courts and Tribunals (PICT)<sup>25</sup> was established in 1997. It is, in fact, a network of researchers and practitioners sharing a common interest in the study of international courts and tribunals and the implications of their operation for the broader field of international law which grew out of collaboration between academic institutions in New York and London (the Center on International Cooperation (CIC), New York University, and the London-based Foundation for International Environmental Law and Development (FIELD) and subsequently, the Centre for International Courts and Tribunals, University College London).

According to PICT, there has also been a rapid increase in the number of international judicial bodies created over the last 15 years together with greater willingness to have recourse to them. More and more cases are annually being submitted to these judicial and quasi-judicial bodies which are open, to varying degrees to other international actors, such as international organizations, and legal and natural persons (individuals, corporations, NGOs, etc.).

When it comes to the environment, it can be argued that this reflects the increasing attention States are paying to compliance with their international environmental obligations. This is because:

- over recent years States have assumed a greater number of and more stringent environmental obligations under Treaties and Protocols<sup>26</sup>
- there is a growing demand of States and their citizens on natural resources at a time when those resources continue to deplete thereby developing potential or future sources of conflict over access to those resources
- economic interests and needs have progressively become more and more the focus of

---

<sup>24</sup> <http://www.un.org/en/documents/charter/intro.shtml>

<sup>25</sup> <http://www.pict-pcti.org>

<sup>26</sup> Steven Recchia of the University of California, Irvine and University of California, Berkeley in his article *Explaining the International Environmental Cooperation of Democratic Countries* published in 2001 by the Center for the Study of Democracy, UC Irvine stated that, in 1920, the estimated total number of environmental treaties was only eight. These grew to about 20 by 1940, expanding dramatically to about 100 by 1970. By 2000, the United Nations estimated that the cumulative number of bi-lateral, regional, multilateral, and international environmental treaties to be about 160, a number which by now, in 2012, have almost doubled <http://escholarship.org/uc/item/0gn942xm>.

## THE CASE FOR AN INTERNATIONAL COURT OF THE ENVIRONMENT

international environmental obligations as demonstrated by UNCTAD (2011)<sup>27</sup> which indicated the international community must agree upon the principles for the design and implementation of trade-related instruments in relation to a green economy and which is one of the themes of the United Nations Conference on Sustainable Development (UNCSD)<sup>28</sup> to take place in Brazil on 20-22 June 2012 to mark the 20th anniversary of the 1992 United Nations Conference on Environment and Development (UNCED)<sup>29</sup>, in Rio de Janeiro, and the 10th anniversary of the World Summit on Sustainable Development (WSSD)<sup>30</sup> held in Johannesburg from 26 August to 4 September 2002. States that do not comply with these international environmental obligations are seen to have an unfair and even unlawful advantage over those States that do abide by them

- there is ever increasing pressure from civil society and from individuals throughout the planet to have access to an appropriate international forum where their international environmental rights can be defended and vindicated.

In fact, ICEF's draft Project for an International Court of the Environment presented at the 1992 Rio Conference, suggested, whilst always recognising that the international community will be the final arbiter, the following model for a global environmental court based on the following principles that:

- 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
- everyone has the right of access to environmental information and the duty to provide any environmental information in his/her possession
- 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
- everyone, whether an individual or an 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
- 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 and in its recycling and re-utilisation.
- the States shall recognise and guarantee the human right to the environment, and foster conditions that make this right effective
- 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

---

<sup>27</sup> <http://www.unctad.org/templates/webflyer.asp?docid=15574&intItemID=2068&lang=1>

<sup>28</sup> <http://www.uncsd2012.org/rio20/index.html>

<sup>29</sup> <http://www.un.org/geninfo/bp/worconf.html>

<sup>30</sup> <http://www.un.org/events/wssd/>

## THE CASE FOR AN INTERNATIONAL COURT OF THE ENVIRONMENT

Above all, ICEF believed and still believes that the States are called upon to:

- adopt all policies in accordance with the global principle of complete compatibility with the equilibrium of the earth's ecosystem
- adopt all policies in accordance with an equitable principle for the utilisation of the earth's common resources by all peoples
- adopt all policies in accordance with a principle respecting the right to the environment of future generations
- 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 affects cannot be determined until all such uncertainty has been removed
- take action to restore degraded ecosystems
- prevent the transfer of environmental harm and risks to other parts of the world
- prevent military action that procures irreversible environmental damage
- adopt environmental standards that have been recommended at an international level and, in their absence, other standards aimed at preventing or significantly reducing the various kinds of pollution and at guaranteeing the equitable utilisation of resources
- 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
- urgently implement control and monitoring systems that are global, continuous, transparent, well publicized and comprehensible to everyone
- prohibit forms of propaganda for the manufacturing and production and for the utilisation of resources considered to be incompatible with the requirements of education and the right to correct and complete environmental information
- conserve terrestrial, coastal and marine habitats together with the species of flora and fauna subject to special protection
- conserve the quality of agricultural land and related products against the excessive use of pesticides
- 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
- make the scientific and technical information necessary for protecting the environment available



## THE CASE FOR AN INTERNATIONAL COURT OF THE ENVIRONMENT

- co-operate in research and monitoring and assist in cases of environmental disasters
- subject economical initiatives with other States and especially with the South of the planet to environmental impact assessment
- encourage the conservation of large ecosystems 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 obligation at the service of human values.

An International Court of the Environment established as a permanent organ will assist the States in meeting these international obligations. Its objectives will be:

- to protect the environment as a fundamental human right in the name of the International Community
- 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
- 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
- to adopt urgent and precautionary measures when any environmental disaster concerning the International Community is involved
- 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
- to arbitrate, upon request, without prejudice to its judicial role
- 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.

Nationals will also be able to seek a preliminary ruling from the International Court on the international or national nature of the question brought before it.

In terms of proceedings:

- hearing will be public
- all parties will have the right to a defence
- judgments will state the reasons on which they are based and they shall be final
- civil remedies will include interlocutory or perpetual injunctions, or an orders directing the

## THE CASE FOR AN INTERNATIONAL COURT OF THE ENVIRONMENT

party against whom judgment is made to pay the costs of restoring the damaged environment, where this is possible, and, failing that, to compensate for damages, with an order to pay the relative sum into the World Environmental Fund

- enforcement of judgments will be entrusted to the United Nations Security Council.

In terms of *locus standi*, the following parties will have standing before the International Court:

- international organizations under the United Nations and the individual organs of the United Nations
- supranational organizations, such as the European Union
- States
- non-governmental organizations and environmental associations
- individuals

However, the ability of individuals or non-governmental organizations or environmental associations to bring an action before the International Court will be subject to the following conditions:

- 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
- that the claim, having 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 will also be able to 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.

Whenever the International Court finds in



## THE CASE FOR AN INTERNATIONAL COURT OF THE ENVIRONMENT

favour of an individual or association, it will be able to 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 should 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 should 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 will only have the right to costs before the International Court.

But what real progress has been made towards the achievement of the goal of an International Court of the Environment over these last 20 years since the first Rio Conference? In fact, very little.

ICEF was optimistic in 1991 and 1992 when the European Parliament tabled two Motions for Resolutions, calling for a Community initiative on the subject of an International Court of the Environment (B3-0718/91 and B3-0262/92)<sup>31</sup>. The Resolution of 13 February 1992 stated that the EC should attend the UNCED conference in Rio de Janeiro (Earth Summit, June 1992) and called for *'the institution of an international environmental court with worldwide jurisdiction, either at the ICJ in The Hague or at the UN in New York'* (Paragraph 14 of the Resolution). This did not occur.

Now, two decades later, the European Parliament adopted a Resolution of 29 September 2011 on developing a common EU position ahead of the United Nations Conference on Sustainable Development (Rio+20)<sup>32</sup>. Among, its proposals, it:

20. *Calls on the Rio+20 Summit to insist on rapid progress in ensuring the effectiveness of the existing international legal framework for the protection of the environment by encouraging States to join existing international instruments and signatory countries to proceed with their speedy ratification.*

It also in terms of information, participation, and access to justice:

82. *Considers it of the utmost importance to continue to empower citizens in environmental governance and calls for progress in Rio+20 on ensuring the effective global implementation of Rio Principle 10; considers that the EU has important experience to offer in international discussions with over 10 years of implementation of the Aarhus Convention;*

83. *Calls for the provisions of Aarhus Convention to be expanded beyond UN ECE through a global Convention or by opening the Aarhus Convention to parties outside UN ECE;*

[omissus]

101. *Reiterates its proposal for an international environmental court so that global environmental legislation becomes more binding and enforceable, or at least an international authority, such as an ombudsman with mediation powers;*

102. *Calls on the Rio+20 Summit to launch a strategy for strengthening coherence between the different multilateral environmental agreements; stresses, in this regard, the need for a coordinated*

---

31 OJEC No. C 183, 15/07/91 and OJEC No. C 125, 18/05/92.

32 <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&language=EN&reference=P7-TA-2011-0430>

## THE CASE FOR AN INTERNATIONAL COURT OF THE ENVIRONMENT

*approach between the three Rio Conventions (Biodiversity, Climate Change and Desertification) as they are intrinsically linked, operate in the same ecosystems and address interdependent issues;*

*103. Emphasises the need to involve global, national and local actors in the implementation processes.*

Unfortunately, this compromise is repeated in the zero draft outcome document, 'The Future We Want'<sup>33</sup> prepared by the co-chairs of the UN Rio+20 'Earth Summit' Preparatory Committee. Whilst recognising that '*coordination and cooperation among the MEAs are needed in order to, inter alia, address policy fragmentation and avoid overlap and duplication*', the draft only goes as far as to say it will merely take into consideration the following:

*57. We agree to further consider the establishment of an Ombudsperson, or High Commissioner for Future Generations, to promote sustainable development.*

Whilst an Ombudsperson may be a start, many in civil society are convinced that this is not sufficient. This is because Ombudspersons usually have to rely on mediation or other forms of alternative dispute resolution mechanisms and have no real decision making or enforcement powers. This was so rightly pointed out in the document released 1 November 2011 by the British Trade Union Council and the UK NGO's in their Joint Rio+20 Narrative for The United Nations Conference on Sustainable Development - [then] 4-6 June 2012 in which they emphasize the need for:

*International Court for the Environment - Environmental problems extend across international boundaries, but there are few effective international institutions to deal with them properly. Strengthening international environmental law mechanisms are essential to securing sustainable development. The Rio+20 outcome document should accordingly recommend the establishment of an International Court for the Environment (ICE). This would build trust, harmonise and complement existing legal regimes and provide clarity and access to justice as well as redress<sup>34</sup>.*

Internationally, the situation, however, does not seem in favour of establishing such a Court and there appear to be a number of reasons for this:

- the States have an on-going reluctance to give up a part of their sovereignty even in the face of global environmental problems that concern the international community as a whole and the future of the entire planet
- there is too much fragmentation among existing courts and arbitration bodies (International Court of Justice of the Hague; Permanent Court of Arbitration, International Tribunal for the Law of the Sea; WTO Dispute Settlement Body; Interamerican Commission on Human Rights; African Commission on Human and Peoples' Rights; European Court of Justice; European Court of Human Rights; North American Free Trade Agreement; and numerous different compliance mechanisms under MEAs, etc.)
- there is a substantial risk of the development of inconsistent and fragmented jurisprudence regarding complex problems (concept of disputes of international environmental relevance; concept of internationally relevant environmental damage; concept of legal accountability of the States for their failure to prevent/repair cross-border environmental damage; common and differentiated responsibility; applicable principles, such as prevention, precaution, the polluter pays, equity and future generations, etc.)

---

<sup>33</sup> op. cit. Footnote 17

<sup>34</sup> <http://www.tuc.org.uk/international/tuc-20274-f0.cfm>

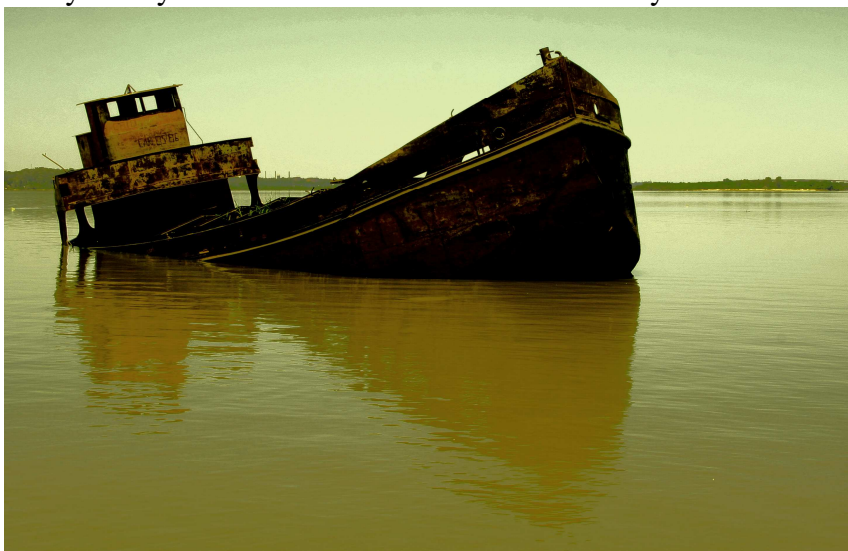
## THE CASE FOR AN INTERNATIONAL COURT OF THE ENVIRONMENT

- there is a real risk of restricting the implementation of the principles of transparency, public participation and access to justice only to the domestic/regional spheres
- above all, there is the danger of leaving out real conflicts relating to the common environmental resources like water, forests, biodiversity, and so on thereby paving the way for the unfair socio-economic exploitation of resources in a globalised economy<sup>35</sup>.

On this last point, the pope has also recently spoken out. In July 2009, in fact, Pope Benedict XVI in his 'Charity in Truth' encyclical<sup>36</sup> called for a **World Political Authority** for governing the economy and protecting the environment at the global level. He said it should be '*regulated by law*' and '*would need to be universally recognized and to be vested with the effective power to ensure security for all, regard for justice, and respect for rights*'.

As noted by the Prings in their article in the Oregon Review of International Law<sup>37</sup> some not so very successful attempts have been made to set up special chambers or tribunals or other dispute-resolution mechanisms to deal with international environmental issues. They mention the International Court of Justice, the Permanent Court of Arbitration and the Commission for Environmental Cooperation (CEC) under the North American Agreement on Environmental Cooperation. Accordingly, we will take a brief look at these and then discuss why we consider the International Court of the Environment Foundation model to be preferable.

The **International Court of Justice (ICJ)** is the principal judicial organ of the United Nations (UN). It was established in June 1945 by the Charter of the United Nations and began work in April 1946. The ICJ's role is to settle, in accordance with international law, legal disputes submitted to it by States and to give advisory opinions on legal questions referred to it by authorized United Nations organs and specialized agencies. It is composed of 15 judges, who are elected for terms of office of nine years by the United Nations General Assembly and the Security Council.



In view of the growing concern to protect the environment and the parallel development of environmental law in July 1993, the ICJ set up the seven-member Chamber for Environmental Matters. It believed that it should be in a position to deal as efficiently as possible with any environmental matter within its jurisdiction that might be submitted to it. Therefore, pursuant to Article

35 See, Postiglione, A., *Global Environmental Governance: The need for an International Environmental Agency and an International Court of the Environment*, Brussels, Bruylant, 2010, 258 p.

This important volume is divided into 4 parts: Part I presents the need for global environmental governance, Part II refers to a new approach to the environmental question founded on the relationship between human rights and the environment; Part III is dedicated to environmental governance at national, European and international levels; and Part IV makes suggestions about Projects on the environment and on the international regulation of the environment.

36 Encyclical Letter *Caritas in Veritate* of the Supreme Pontiff Benedict XVI to the Bishops Priests and Deacons Men and Women Religious the Lay Faithful and All People of Good Will on Integral Human Development in Charity and Truth at [http://www.vatican.va/holy\\_father/benedict\\_xvi/encyclicals/documents/hf\\_ben-xvi\\_enc\\_20090629\\_caritas-in-veritate\\_en.html](http://www.vatican.va/holy_father/benedict_xvi/encyclicals/documents/hf_ben-xvi_enc_20090629_caritas-in-veritate_en.html)

37 See Footnote 5.

## THE CASE FOR AN INTERNATIONAL COURT OF THE ENVIRONMENT

26 (1) of its Statute, the Court formed a specialized Chamber responsible for dealing with environmental cases but in order for a case to be brought before the chamber rather than before the plenary Court, the agreement of the parties was required.

The chamber was periodically reconstituted until 2006. But, sadly, in its 13 years of existence, no State ever requested that a case be dealt with by it. The ICJ consequently decided in 2006 to hold no further elections for a Bench for the Chamber.

Not only that, whilst influential and widely respected, the International Court of Justice itself has not been immune from criticism. Although, since the 1980s there appears to have been a greater willingness to use the Court, especially among developing countries, up to date, the ICJ has dealt with relatively few cases<sup>38</sup>. The problem is seen to be its lack authority, largely stemming from the restricted general authority that Member States have assigned it through its charter. This includes the fact that:

- its so-called 'compulsory' jurisdiction is limited to cases where both parties have agreed to submit to its decision
- organizations, private enterprises, NGOs and individuals cannot bring their cases before the ICJ just like U.N. agencies cannot bring a case except in advisory opinions (a non binding process initiated by the court)
- other existing international courts, like the International Criminal Court do not fall under the umbrella of the ICJ
- permanent members of the Security Council being still to veto enforcement of cases, even those to which they consented in advance to be bound thereby meaning that the ICJ is without full separation of powers.

On the other hand, the **Permanent Court of Arbitration (PCA)**<sup>39</sup> was established in 1899 to facilitate arbitration and other forms of dispute resolution between states. It is an intergovernmental organization (IGO) of over 100 Member States. Dispute resolution mechanisms, under Article 33<sup>40</sup> of the UN Charter, are available through the PCA .

Furthermore, in 2001, the PCA adopted Optional Rules for Arbitration of Disputes Relating to the Environment and/or Natural Resources. These Rules were drafted by a working group and committee of experts in environmental law and arbitration. Their aim was to address the principal gaps in environmental dispute resolution. These were followed in 2002 by the Optional Rules for Conciliation of Disputes Relating to the Environment and/or Natural Resources<sup>41</sup>.

Parties may apply for arbitration, mediation or examination of facts. However, whilst the PCA

---

38 <http://www.icj-cij.org/docket/index.php?p1=3&p2=2&lang=en>

39 [http://www.pca-cpa.org/showpage.asp?pag\\_id=363](http://www.pca-cpa.org/showpage.asp?pag_id=363)

40 Article 33 of the UN Charter states:

*1. The parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, shall, first of all, seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice.*

*2. The Security Council shall, when it deems necessary, call upon the parties to settle their dispute by such means.*

<http://www.un.org/en/documents/charter/chapter6.shtml>

41 Qiong Wu, C., *A Unified Forum? The New Arbitration Rules for Environmental Disputes under the Permanent Court of Arbitration*, 2002, No. 3, Chicago Journal of International Law, p. 263.

## THE CASE FOR AN INTERNATIONAL COURT OF THE ENVIRONMENT

allows organizations, private companies and even private individuals to try to resolve a dispute with a State as well as providing for the handling of conflicts between an international organization and a private party, all cases can only be brought before it by agreement of all those involved.

Therefore, despite the efforts of the PCA to become the first 'unified' international forum for environmental dispute resolution, its lack of a compulsory jurisdiction and other procedural limitations undermine its effectiveness in resolving transboundary environmental disputes.

Since 1994, Canada, Mexico and the United States have collaborated in protecting North America's environment through the [North American Agreement on Environmental Cooperation \(NAAEC\)](#) which came into force at the same time as the North American Free Trade Agreement (NAFTA). Its objective was that a commitment that liberalization of trade and economic growth in North America should be accompanied by effective cooperation and continuous improvement in the environmental protection provided by each country. Therefore, the NAAEC established an international organization - the [Commission for Environmental Cooperation \(CEC\)](#)<sup>42</sup> - in order to:

- address regional environmental concerns
- help prevent potential trade and environmental conflicts
- promote the effective enforcement of environmental law.

Its mission, therefore, is to facilitate cooperation and public participation in the interests of conservation, protection and enhancement of the North American environment, within the context of increasing economic, trade and social links among Canada, Mexico and the United States.

Procedures are provided under Articles 14 and 15 of the NAAEC, known as the 'Citizen Submissions on Enforcement Matters'<sup>43</sup> or 'SEM' process) that permit any 'non-governmental organization or person [...] residing or established in the territory of a Party' to make submissions to the CEC Secretariat asserting 'that a Party [to the NAAEC] is failing to effectively enforce its environmental law.'

Despite this and despite the fact that the CEC works hard to promote citizen participation and to demonstrate its own transparency, it appears not to have lived up to the high expectations it originated with<sup>44</sup>. Moreover, its basic flaw is that the CEC is not a court and cannot make any rulings. Neither is the SEM process adversarial and, furthermore, it has no powers of enforcement.

---

42 [http://www.cec.org/Page.asp?PageID=1226&SiteNodeID=310&BL\\_ExpandID=154](http://www.cec.org/Page.asp?PageID=1226&SiteNodeID=310&BL_ExpandID=154)

43 [http://www.cec.org/Page.asp?PageID=1226&SiteNodeID=210&BL\\_ExpandID=156](http://www.cec.org/Page.asp?PageID=1226&SiteNodeID=210&BL_ExpandID=156)

44 Alm, L.R. and Burkhart, R.E., *Is Spotlighting Enough? Environmental NGOs and the Commission for Environmental Cooperation*, Volume 67, Canadian-American Public Policy, 1-46.

## THE CASE FOR AN INTERNATIONAL COURT OF THE ENVIRONMENT

### Conclusion

The ICJ, the PCA and the CEC are just three examples of a wide range of models for environmental courts, tribunals or quasi-judicial bodies, many of which have been widely debated during the many Conferences<sup>45</sup> organised by ICEF and by the numerous books and articles<sup>46</sup> it has published since its inception.

The great advantage of ICEF's proposal of an independent, permanent International Court of the Environment that gives standing to individuals and NGOs is that it would provide comprehensive as opposed to fragmented international legal protection and enforcement. As it would be responsible for environmental cases it would also become specialised in the application of the law in this highly complex field. As cited in the EEC Study Document on 'The Possibility of Establishing an International Environmental Court - Premises, Opportunities and Obstacles. The Position the European Community and Initiatives it Might Adopt'<sup>47</sup>:

*'The establishment of effective environmental protection at international level is a matter of increasingly urgent concern in view of the global effects of various environmental disasters in recent years in particular. It is not just a matter of creating a more watertight and effective range of legal provisions; action must be also be taken to ensure that a court exists with the most extensive international jurisdiction possible to penalise environmental crime, to take provisional preventive measures in emergencies and, where appropriate legal provisions are lacking, to create law itself if need be. It is also essential in this context that individual and organisations should have the right to institute proceedings'.*

**Only ICEF's model for an International Court of the Environment meets all these criteria.**

---

<sup>45</sup> [http://www.icef-court.org/site/index.php?option=com\\_content&view=category&id=34&Itemid=71&lang=it](http://www.icef-court.org/site/index.php?option=com_content&view=category&id=34&Itemid=71&lang=it)

<sup>46</sup> [http://www.icef-court.org/site/index.php?option=com\\_content&view=category&id=34&Itemid=71&lang=it](http://www.icef-court.org/site/index.php?option=com_content&view=category&id=34&Itemid=71&lang=it)

<sup>47</sup> Postiglione, A., International Report 1996- The Global Environment Crisis: The Need for an International Court of the Environment, 1996, Giunti, p. 69.