



AN INTERNATIONAL COURT FOR THE ENVIRONMENT

Introduction

As the Copenhagen Conference (COP 15) approaches the certainty of the increasing threat of climate change continues to pose the vexing question of how we are going to work together to protect the global community and, moreover, ourselves. The solution is simple to propose but immensely difficult to coordinate; everyone needs to work together to create a more sustainable future. Individuals, businesses, lawyers, local and international organizations, and States need to cooperate to meet the challenges we all face. New institutions dedicated to bringing people together, facilitating equitable solutions to areas of disagreement which are available equally to both rich and poor, are needed now more than ever.

The solution we propose is for the creation of an International Court for the Environment. As no such Court currently exists, it seems timely to (a) review those international legal instruments which already exist to facilitate a solution to climate change, and (b) to suggest that the creation of a new instrument deserves consideration.

Existing institutions for dispute resolution

The oldest legal institution dedicated to resolving international disputes is the Permanent Court of Arbitration. The PCA has jurisdiction over disputes when at least one party is a state and when both parties to the dispute expressly agree to submit their dispute for resolution. Regrettably, however, its decisions are not made available for public inspection.

The International Court of Justice may accept cases that are environmentally related but only nation states have standing not non-state entities. Furthermore, the

jurisdiction of the Court depends on whether two or more states have consented to it. In 1993, the ICJ established a Chamber to deal specifically with environmental matters. However, no state ever submitted a dispute to that Chamber.

Another existing instrument to support international dispute resolution and mitigate human impacts on climate change is the Rio Declaration of 1992 (and accompanying Framework Convention on Climate Change) famously led to the Kyoto protocol, signed in Japan on 11th December 1997. This Protocol, for the first time, contained international obligations requiring countries to reduce their greenhouse gas emissions below specified levels. However, constraints upon enforcement remain a significant weakness.

The European Union has, for many years, legislated on environmental matters. The European Commission regulates issues of compliance under European environmental law with disputes being referable to the European Court of Justice. Significantly too, in 1998, a number of states, principally European, entered into the so-called “*Aarhus Convention on Information, Public Participation in Decision-making and Access to Justice in Environmental Matters*”. The Aarhus Convention of course only applies to its signatory states and at present there is no global equivalent.

A new proposal

In these circumstances, it may be thought that the establishment of an International Court for the Environment is a valuable goal that would add to the body of jurisprudence in international environmental law and provide a forum both for states and for non-state entities. Ideally, such a Court would be compulsory and would include (i) an international convention on the right to a healthy environment; (ii) direct access by NGO’s and private parties as well as states; (iii) transparency in proceedings; (iv) a scientific body to assess technical issues; and (v) a mechanism (perhaps to be developed by the Court itself) to avoid forum shopping.

To those who doubt the feasibility of any such proposal, an encouraging precedent is the establishment, after sustained pressure by NGOs and others, of the International Criminal Court.

The ultimate aim

The ICE, as an international court, would sit above and adjudicate on disputes arising out of the UN “environmental” treaties, including the UN Convention on Biological Diversity 1992 and the UN Framework Convention on Climate Change 1992, the UN Convention on the Law of the Sea 1982, any other applicable UN environmental law, as well as customary international law. The aim would be for it to incorporate all of the work of the current tribunals under the existing UN environment treaties (e.g. the Kyoto Protocol Enforcement Branch). The aim would be, ultimately, to achieve one single court dealing with all UN environmental law. Depending on the views of signatory states, there might be a restriction to investigate only the “most serious” breaches – in line with a similar restriction upon the International Criminal Court’s jurisdiction.

The sanctions imposed could include declaratory relief, fines and, along the lines of the EC Environmental Liability Directive, sanctions of restoration and rehabilitation of damaged habitats. The ICE could also hand down declarations of incompatibility as regards Signatory State legislation where it conflicts with the UN environmental rules. In addition, it could sanction Signatory States for failures to permit enforcement of judgments. There would also be provision for interim measures, specifically, injunctions, enforceable in Signatory States.

It is further suggested that the ICE could produce a half-yearly or annual report listing its activities and naming and shaming wrongdoers (be they those who have breached the law or Signatory States which permit failures to enforce judgments). It is also suggested the ICE invite a panel of international environmental experts to assist it.

Overall conclusion

We hope that you will support us in our call for the creation of an International Court for the Environment. We encourage you to discuss this proposal and others that improve access to international environmental justice and will act to mitigate the

increasing threat of climate change. We invite you to join the ICE Coalition at www.environmentcourt.com. We all need to act now. At stake is our very survival.

The ICE Coalition

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