

# PROJECT FOR AN INTERNATIONAL COURT OF THE ENVIRONMENT – ORIGINS AND DEVELOPMENT

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### **Roman origin**

The idea of global environmental justice is deeply felt on all continents as a universal common value in order to assure both the enforcement of the human right to the environment and sustainability of life on earth.

It is in Rome, the universal city for its tradition and culture, that international environmental justice took its first steps. In 1968, the Club of Rome, founded by Aurelio Pecci, vigorously raised the scientific question of the "limits to growth" at the first meeting held at the Accademia dei Lincei.

In 1986, from 9-11 May, an International Forum on "Justice and Environment" was held in Rome, at the Accademia dei Lincei. The initiative was taken by the Italian Supreme Court and the newly established Italian Ministry for the Environment with the participation of the EEC Commission and experts from 15 Countries. The Conference was supported by IRI, presided over at that time by Romano Prodi. In such a venue, the need for a Supranational Authority was also stressed with a view to protecting the environment and environmental damage being considered as economic damage just after the Chernobyl disaster.

In 1988, the International Court of the Environment Foundation (ICEF) was established as an NGO, presided over by Amedeo Postiglione, Justice of the Italian Supreme Court. In 1989, from 21 to 24 April, again at the Accademia dei Lincei in Rome, the First ICEF Conference was held at a global level. It expressly linked the question of a more effective International Human Right to the Environment to that of creating an International Tribunal for the Environment, as openly suggested by Amedeo Postiglione. The Conference was organised and chaired by the Italian Supreme Court, with the support of ENI and the participation of outstanding experts from 32 countries.

The Final Recommendation of the 1989 Rome Conference accepted the proposal of establishing an *ad hoc* international jurisdiction for all the problems concerning the environment, also giving access to civil society and not only to States, within a balanced context also featuring a High International Administrative Authority charged with supervision, planning and management.

### **Promotional campaign prior to the UN Conference in Rio de Janeiro**

Simultaneously, in 1990, a promotional campaign for the project of an International Court of the Environment was being launched in several countries in consideration of the UN Summit scheduled for June 1992 in Rio de Janeiro with the participation of NGOs, universities, scientific bodies and outstanding representatives from within the cultural domain. From 13-15 December 1990, ICEF took part as an NGO at the World Meeting of the Associations for the Human Right to the Environment in Limoges, France. Limoges University took the initiative under the direction of Professor Michel Prieur. The Limoges Declaration – containing 12 recommendations drawn up by jurists from 43 countries – for the Rio de Janeiro Conference referred to some proposals made by the Brundtland Commission in 1987 and recommended two brand-new institutional mechanisms: an International Commission for the Environment – indeed established in Rio – and a High Commissioner for the Environment and Development, a kind of independent International Ombudsman.

ICEF submitted a long report on "The human right to the environment: national and international recognition," which was published and accepted in principle, stating, as to its fundamental issue, the matter of "placing environmental conflicts under international jurisdiction open to all States." Recommendation No.4 defined the idea of the environment as a human right and insisted on the need for access to justice on the part of individuals before an international jurisdiction. In 1990, ICEF participated in a conference organised at Fort Myers by the State University of Florida, and, in 1991, in two scientific meetings in Tokyo, with the Universities Gatsushin and Rijkid and the Japanese Federation of Bar Associations supporting the project.

At Palazzo Vecchio in Florence, from 10-12 May 1991, a specific International Conference was held in order to examine the project for an International Court of the Environment. The initiative was organised and chaired by the Italian Supreme Court and was supported by the Tuscany Region, the Province and the Municipality of Florence, the European Commissioner for the Environment and authoritative experts from 25 countries. The conference was very successful as reported by Italian and foreign scientific institutions, the press and economic bodies such as IRI, ENI, ENEL, Alitalia, ENEA, ESSO, Iritecna, Alenia and others. From the institutional and moral point of view, there was the support of the Holy See and the Chief Justice of the Italian Constitutional Court.

The Chief Justice of the Italian Supreme Court, H.E. Antonio Brancaccio, who chaired the International Conference in Florence, decided on his own initiative to establish a Scientific Secretariat by a Special Decree of 24 September 1991 with a view to future development. The Scientific Secretariat is an organ of the Court, is located at the Court and is directed by Judge Amedeo Postiglione. In this way, an independent and highly authoritative institution of a western country has given the project a character of seriousness and reliability.

ICEF took part in the Preparatory Conference of Rio de Janeiro in the autumn of 1991, organised by the Municipality of Rio de Janeiro, and submitted the project for an International Court of the Environment which was published in full in the proceedings of the meeting. ICEF also took part in a conference organised by the Portuguese Catholic University in Lisbon, from 15-24 November 1991. From 16-20 December 1991, ICEF participated and presented a video on its project at a conference at the Ministry of the Environment in Paris, France.

The ICEF Third Conference themed "Planet Earth: A Global Village without Regulations," took place at Campidoglio in Rome in 1992, with the participation of many Ambassadors from different continents. The Mayor of Rome also attended the conference held at the Sala della Protomoteca.

Soon after, ICEF became a Foundation by means of a public deed executed in Rome on May 5, 1995. The Foundation was supported by Alenia and Iritecna and had its headquarters at the Italian Supreme Court where the Scientific Secretariat now works. Since the Foundation is a non-profit-making organisation, it could take part at the Rio Conference as the only entity exclusively aiming at creating an International Court of the Environment at a global level. On 17 May 1991 and 9 March 1992 the European Parliament adopted a Resolution, (B 30718/91, B302262/92) in view of the Rio Conference about the constitution of an International Tribunal for the Environment, signed by Alexander Langer and other MPs from several European Countries. The Resolution was not discussed at the Rio Conference.

### **UN conference in Rio de Janeiro**

In June 1992 a large ICEF delegation consisting of experts from Italy and other countries took part in the conference held in Rio de Janeiro and presented the project by submitting a special volume "The Global Village Without Regulations" – Giunti Editore, Florence, 1992 – and, on this occasion, it also had a meeting on this topic with the Japanese Federation of Bar Associations, similarly involved in supporting the idea.

### **ECC study document**

On June 14, 1993, the EEC published a study on "The Idea of an International Court of Justice for the Environment" by the General Directorate for Studies of Luxembourg, IV/WIP/93/03/152, where it compared the ICEF project which aimed at establishing an independent court for the environment with already existing institutions – the Court of Justice at The Hague; the Court of Justice of the European Communities in Luxembourg, the Court of Human Rights in Strasbourg. The conclusion underlined the scientific and legal seriousness of the ICEF project, especially with reference to access to environmental justice for all individuals meant as the expression of a fundamental human right.

ICEF participated in a conference in Toronto, Canada, on 26-28 January 1993. From 4-9 October 1993, ICEF participated in a conference and several events, such as the establishment of an ICEF South America Committee, at the University of Buenos Aires and the Univesidad del Museo Social Argentino. On 27 April 1993, ICEF participated in a conference organised by the International Society of Doctors for the Environment, in Lucerne, Switzerland. The project was presented by Alexander Lager and Amedeo Postiglione in a scientific milieu with a special interest in health. In June 1993, ICEF began co-operation with the UN Commission on Sustainable Development and met its President, Niton Desai.

From 31 January to 2 February, in New York, USA, ICEF participated in the meeting of the Commission on Sustainable Development and the press conference about the next conference in Venice from 11 to 28 April 1994. In April 1994, after highly-intensive work at a global level, the International Conference of Venice was presented in New York during the First Session of the Commission on Sustainable Development at a meeting with the press at the UN headquarters. The aim of the conference would be to, once again, propose the project, which had not been discussed in Rio de Janeiro.

### **Development of the idea**

In 1994, ICEF brought the idea of the establishment of an International Court of the Environment before the following fora: Japan Federation of Bar Associations conference on "Sustainable Society," 19-21 March, Kobe, Japan; European Environmental Bureau, 21-23 March, Brussels, Belgium; IUCN-European Environmental Bureau, 29 April, Bonn, Germany; Klima Slindis-Climate Alliance of European Cities, 1 May, Loccum, Germany; Victoria Falls-AICEM II, 18-21 October, Zimbabwe; House of Commons-Meeting with MPs and Representatives from the Department of the Environment, 11 November, London, UK; International Court of Environmental Arbitration and Conciliation, 21-26 November, Mexico City, Mexico.

From 2 to 5 June 1994, the ICEF Fourth International Conference "Towards the World Governing of the Environment," took place in Venice. It was supported by the Chief Justice of the Italian Supreme Court and was held under the auspices of the President of the Italian Republic. The conference was organised thanks to the economic, political and cultural efforts of the Municipality of Venice, the Province of Venice, the Veneto Region and the Italian National Research Council. The great number of international experts attending the Conference made the project for an International Court of the Environment gain consensus from legal, economic, social, cultural, scientific and religious viewpoints through the

contribution of the five ICEF Fora.

On 2 April 1995, during the Conference on Climate Change, ICEF took part in a special meeting on an "International Climate Tribunal," organised in Berlin by Eurostar and several NGOs from Germany and Austria.

Also in 1995, ICEF brought the idea of the establishment of an International Court of the Environment before the following fora: UN World Summit on Social Development, Copenhagen, Denmark; United Nations Commission on Sustainable Development, 11-28 April, New York, USA; Conference "Basic principles of environmental law in the European Union," 19-21 April, Seville, Spain; FAO Meeting, 12 May, Rome, Italy; Universidad del Museo Social Argentino Jornadas Internacionales de Medio Ambiente, 22-23 June, Buenos Aires, Argentina; Municipality of Epidaurus "Italian legislation for the conservation of nature" Conference, 14-16, September, Epidaurus, Greece; UN World Summit on Women, 4-14 September, Beijing, China; European Environmental Tribunal "Green Access to Justice," 21-23 September, Brussels, Belgium; Cilame-Jerry Bourgeois, 21 October, Paris, France; International Court of Environmental Arbitration & Conciliation, 27 November-3 December, Cancun, Mexico; "Instruments for Solving Environmental Conflicts at a Global Level" 4-6 December, San Jose, Costa Rica. The ICEF Delegation met the President of the Republic, the President of the Parliament and the Minister of Justice. The Government of Costa Rica also attended the meeting.

In Venice, on 5-6 May 1995, ICEF Social and Women's Forum organised a special simulation of judgements rendered in the most relevant cases of environmental damage on the various continents through the participation and the testimony of women from different countries such as India, Ecuador and Canada.

The year 1996 was entirely dedicated to the preparation of a new International Conference at Paestum by attending, as usual, the work of the Commission on Sustainable Development in New York in April. On 29 October 1996, the Sixth International ICEF Conference convened at Capidoglio in Rome. The meeting was themed "Global Environmental Crisis: the Need for an International Court of the Environment" and was supported by the Mayor of Rome, the Minister for the Environment and the representatives of the Municipality of Paestum, the Province of Salerno and the Campania Region. Ambassadors from several countries also attended the meeting. The First ICEF Report was also submitted.

In 1997, ICEF brought the idea of the establishment of an International Court of the Environment before the following fora: "Control of the implementation of international conventions," 10-11 January, University of Marseille, France; "Great issues of our times: the environment in the Maastricht Treaty," 11-14 April, University of Valencia, Spain. ICEF also attended the meeting of the UN General Assembly in New York.

From 5-10 June 1997 the scheduled ICEF International Conference was held at Paestum, in the Campania Region, in the south of Italy, and dealt with "Environment and Culture: The Common Heritage of Humankind." The Italian Government, through the Prime Minister's Office, co-ordinated the various Ministries interested in giving their political and economic support. So the project for an International Court of the Environment experienced a new boost. The conference was supported by the local municipalities, the Province of Salerno, the Campania Region, the Cilento National Park, CNR and many other institutions and recorded the extraordinary attendance of many countries, among others, Japan, China, India, Russia, Pakistan, countries in North and South America, countries of the European Union and some African countries.

From 5-10 December 1997, ICEF participated at a Prep-Com in Addis Abeba for the Pan-African Conference together with other NGOs, the Organisation of African Unity and the UN in Africa. The project was very interesting and concerned the practical identification of environmental conflicts, due to pollution or misuse of resources, and their examination at a first Pan-African Environmental Conference, but it failed to come to fruition because of the lack of appropriate political or economic support.

### **Involvement of governments and parliaments**

In 1998, ICEF published its Second Report in English and sent it to all governments of the world. From 25-29 April, ICEF attended the annual meeting of the Commission on Sustainable Development in New York. In June and July 1998, ICEF supported, together with other NGOs, the Conference on the International Criminal Court held in Rome, at the FAO headquarters and during a special meeting suggested that crimes against the environment should also be included.

From 10-12 September, ICEF promoted and attended the conference on "Implementation of the right to environmental information in Europe," held in Crete, Greece. ICEF participated with a qualified delegation chaired by H.E. La Torre, Deputy Chief Justice of the Italian Supreme Court and representatives from several other bodies, such as the Council of Europe, IUCN with Wolfgang Burhenn, EPA, EEA, ISPRA Research Centre.

ICEF successfully had the Italian Supreme Court directly undertake a new scientific initiative. On 11 December 1998, the first "Environment Day" took place at the Court. The project for an International Court of the Environment was presented once again as an institutional priority. There was co-operation from the bench, scientific bodies, the public administration, the police forces, environmental associations and the political world. The proceedings have been published with the title *Environmental Damage, Legal and Operational Instruments* by Amedeo Postiglione, ESI, Naples, 1998.

On 18 February 1999, ICEF attended the ceremony for the 100th Anniversary of the Permanent Court of Arbitration in The Hague and encouraged the use of this institution – on a voluntary basis – for settling environmental disputes before a real global and mandatory jurisdiction for the

environment is established, which will also allow access to individuals. ICEF co-operation with the Permanent Court of Arbitration had already begun during the Venice Conference in 1994, with the participation of its then Secretary General, Dr. Jonkman, later succeeded by Tjaco Van den Hout.

### **Co-operation with the Council of Europe and the Interparliamentary Union**

From 25-27 February 1999, ICEF participated in the Fifth Conference on the Mediterranean and Black Sea Basins, organised in Turkey by the Council of Europe, and submitted the project raising the interest also of the Interparliamentary Union. ICEF's Report was sent to all governments and parliaments of the world.

### **The conference in Washington**

In April 1999, ICEF co-operated with George Washington University in a conference themed "Is there a need for a body to resolve international environmental disputes?" The final resolution of the conference supported the project for an International Court of the Environment which was also encouraged by other authoritative bodies – CIEL, International Bar Association, EPA, Catholic University of America, ICEF North America Committee – to continue its work.

### **Other conferences and meetings**

Also in 1999, ICEF participated in the following: Meeting of the Commission on Sustainable Development, New York, USA; "State responsibility and access to international courts," Committee on the Environment, Regional Planning and Local Authorities, Council of Europe, 20 May, Paris, France; Council of Europe workshop on "The Bern Convention on national case law affecting implementation," 28-29 June, Strasbourg, France.

On 6 October 1999, the second Environment Day took place at the Italian Supreme Court according to an integrated pattern from the scientific, institutional, social and political point of view. In this new model, there is an informal consensus to the idea of environmental justice at a national, Community and international level. The ICEF Report was sent to all governments and parliaments of the world.

In September 2000, ICEF attended the proceedings at the Special Millennium Summit of the United Nations and the State of the World Forum. ICEF received the support of the Italian Government through the Ministry of Foreign Affairs and the Ministry for the Environment.

On 10 November 2000, in Rome, ICEF's third Environment Day took place, marking the first political involvement of the Italian Government in favour of the International Court of the Environment.

On 20-22 January 2001, in Athens, Greece, ICEF participated in a meeting organised by the Biopolitics International Organisation with the theme: "Resolving the environmental crisis: the need for an International Court of the Environment," along with the Secretary General of the Permanent Court of Arbitration, members of the Council of Europe and the European Commission, scholars, MPs, diplomats and other eminent personalities.

ICEF is also planning to attend the Rio+10 Conference in 2002.

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**Deirdre Exell Pirro** obtained honours degrees in law and history at the University of Melbourne, Australia. On coming to Europe, she became a Research Fellow at the European University, working with Professor Mauro Cappelletti from 1976 to 1980 on the "Access to Justice" Project funded by the Ford Foundation. Since 1981, she has worked with the Italian National Research Council (CNR) and the Italian Corte Suprema di Cassazione on the preparation of documentation for the Italgire legal information research and retrieval system, managed by the Italian Supreme Court. She has participated in many projects sponsored by the European Community such as Eurodoctel, CACTUS and Commerce 2000. Since the date of its inception in 1988, she has been International Relations Officer of the International Court of the Environment Foundation (ICEF), directed by Judge Amedeo Postiglione. She is responsible for promoting the activities of the Foundation by helping to organise international conferences and meetings, publishing reports and papers relating to the Project, attending international conferences and seminars as well as co-ordinating the ICEF Organising Committees around the world.