

NEED FOR AN INTERNATIONAL COURT OF THE ENVIRONMENT

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There is an incontestable urgency for the establishment of an International Court of the Environment on the basis of the following identifiable needs:

- Environmental need: to ensure sustainability of life on earth
- Economic need: limits and opportunities for the global economy
- Legal need: to provide a universal guarantee for the human right to the environment and for the enforceability of international environmental law
- Social need: to ensure information, participation and access of individuals and NGOs to justice
- Political need: to prevent and solve environmental conflicts by enabling a peaceful and balanced development
- Religious need: to respect and preserve the gift of Creation
- Ethical need: to react to the degradation of the planet through new rules on individual and social liability
- Cultural need: to provide the common heritage of mankind with a common defence in the interest of future generations
- Scientific need: an independent global forum fosters freedom and truth about the destiny of the planet

Progress of the project

For over 10 years the International Court of the Environment Foundation (ICEF) has been promoting the creation of a universal jurisdiction for a more effective protection of the environment at the legal level, by improving the dispute resolution instruments already in existence.

ICEF's advice is that the question of an ad hoc international jurisdiction for the environment can be proposed today at a political level, although in a more general context of reforms and progress of the international system concerning environmental protection. It is not a matter of preferring the legal way to other instruments which are equally necessary, but of ensuring balanced and indispensable help through a real jurisdiction to which not only States but also individuals and NGOs may have access.

This jurisdiction shall solve the environmental conflicts according to mandatory legal norms in case of an unsuccessful voluntary agreement of the parties concerned and of serious infringements of mandatory norms regarding the common wealth – *erga omnes* validity. The enforceability of the international law of the environment cannot ignore the positive and necessary role of case law.

Environmental need: to ensure sustainability on earth

The project of an International Court of the Environment chiefly aims at preserving sustainability on earth. In legal terms, a Court of the Earth implies the actual possibility to give practical contents to the application of the ecological economic rules on the basis of the serious global situation and by calling upon the universal responsibility of the economic entities owned either by private individuals or by States against any relevant infringement of the legal system in order to protect the environment.

The first justification for an International Court of the Environment lies, therefore, in the serious risks affecting the very sustainability of life on earth.

Economic need: limits and chances for the global economy

The globalisation of the economy cannot be contested. It is taking place at the same time as globalisation in fields such as science, technology, etc. The tendency to solve the new economic environmental problems with negotiations, following the Anglo-Saxon tradition – instead of adopting authoritative and mandatory means – undoubtedly offers the advantage of gradual empirical adjustment that is agreed upon, but the special nature and characteristics of the environment must also be taken into account; a living ecosystem undergoing a fast degradation in its fundamental balance.

Consequently, together with negotiations by private individuals, multinationals or public institutions, it is necessary to determine some *erga omnes* mandatory conducts likely to be adopted by any body. In this sense, global justice and global institutions shall find a field in which they can function without encountering the insurmountable limits of State sovereignty.

Following these requirements, the International Court of the Environment would ensure a universal economic development based on the fair exploitation of resources, by complying with the legal standards and the obligations as foreseen by international law. The obstacles to the idea of a jurisdiction for the environment at the international level are not "technical" but "political." Just in this very field, jurisdiction can play a positive role by allowing social access to justice and a gradual case law on practical cases of international relevance.

Legal need: guaranteeing the human right to the environment

The international dimension of everybody's right to environmental information – including, of course, international information – has been already acknowledged by the Aarhus Convention so that it is clear that the foundations for a protective mechanism of such a right have been laid, not only at the national level – where such a mechanism already exists – but also before an international jurisdictional instance, although in a necessary gradual way and with the appropriate filters to avert overwhelming irrelevant questions.

The infringement of the norms – at least of those existing now – which ensure participation in projects having transboundary effects, in transportation and the detection of hazardous activities, shall be appropriately considered from the legal point of view by the International Court of the Environment.

At the international level, access to justice – as a last manifestation of the human right to the environment – finds a still insufficient legal reference, as seen in Principle no. 10 of the Rio Declaration. So it seems appropriate that the Convention which will lead to the establishment of the International Court of the Environment should enhance this basic right of every individual by allowing its actual exercise. The International Court of the Environment is the body suited for rendering judgements having *erga omnes* validity for the multilateral Conventions providing for specific obligations – as for quantity, time, etc.

Social need: ensuring information, participation and access of individuals and NGOs to justice

The right to access to justice, as mentioned above, refers to some international legal instruments but lacks an ad hoc Convention which can acknowledge everybody's right to appeal to a supranational jurisdiction in the environmental field. Only with such an innovative legal instrument will it be possible to remove the case of environmental damage having international relevance from the fields laying outside the jurisdiction, since it is society that experiences the environmental damage. It is fair that it can play an independent role of protection also in the case of lack of action by States or even in cases of disputes.

Political need: preventing and solving environmental conflicts by enabling a balanced development

The problem of environmental conflicts cannot be underestimated due to their number, inherent danger, strong expanding dynamics in space and time, and their negative impact on economy and society. Politics must also give an appropriate answer, because much of the phenomenon remains unexplored, though the phenomenon itself is actual and grave.

Environmental conflicts having "national relevance" affect – directly and indirectly, with short-, medium- and long-term consequences – a limited territory falling within the jurisdiction of a single State. "International" environmental conflicts, instead, have significant transboundary effects or effects concerning the common resources outside the jurisdiction.

The anxiety that an International Court of the Environment would represent a break within the international legal system is unfounded, since the Permanent Court of Arbitration in The Hague does not provide the remedy for the present fragmentation of the existing legal system. On the contrary, an ad hoc international jurisdiction for the environment could work out a developing case law which unifies the common principles and features of environmental law.

Furthermore, the new institution could implement the customary principle common to all international law about the States' liability for damage – towards other States and the international community as a whole – with a link between international environmental law and international law in general. Environmental damage having international relevance is the very field in which it is possible to experience, seriously and prudently, an international case law.

Religious need: to respect and preserve the gift of Creation

The three big monotheist religions – Judaism, Christianity and Islam – expressively refer to a unique God, the creator of the universe. Creation is intended as a "gift by God." Therefore, the "sacred" feature of nature must be saved and especially guaranteed through justice – not only in the moral and religious sense, but also from the political and institutional point of view in relation to life on earth.

As soon as man managed to leave the surface of the earth, it became apparent that our planet is just a small celestial body of the solar system, a grain of sand in the infinite universe. We all know and experience that earth hosts life – all the living species that we know of, including man – although it has a limited size and few resources, not all renewable. The biosphere is simply a layer of soil, water and air which covers the globe. These components are interdependent, and a moral principle securing sustainability of life on earth is an absolute priority.

Therefore, today, it seems urgent and necessary to establish – without resorting to bureaucratic controlling and antidemocratic bodies – an International High Authority for the Environment, a real Agency with powers and means, and an International Court of the Environment – i.e. a real jurisdiction open to individuals and NGOs, though equipped with the appropriate filtering mechanisms which could deal with the most serious cases on international liability initiated by individuals, associations or States. This jurisdiction must not be a jurisdiction of the States which already exists at the PCA, but of individuals who are the actual entities concerned with life and must be able to act against States if the latter do not comply with international obligations.

Ethical need: reacting to the degradation of the planet

As mentioned above, the Earth has a limited size and few resources, which are all interdependent. Therefore, environmental justice at a global level has a well-determined ethical basis because the challenge is very actual. Though it is not a simple task, it is urgent to identify some conducts that are to be blamed, prevented and sanctioned from the moral, social and legal point of view.

Progress at the political level: some information

The project of an International Court of the Environment is essentially known by NGOs, governments and parliaments, as shown in the 1996, 1998 and 2000 ICEF Reports and in the bibliography published. After the 1998 Rome Conference on the International Criminal Court, the project of implementing an International Court of the Environment has undergone some acceleration. The following governments have replied to the action undertaken by ICEF:

Argentina, Armenia, Australia, Austria, Bangladesh, Belarus, Belgium, Bulgaria, Burkina Faso, Cambodia, Cameroon, Canada, Chile, China, Colombia, Costa Rica, Czech Republic, Denmark, England, Estonia, Finland, France, FYROM, Gabon, Gambia, Germany, Haiti, Hungary, India, Israel, Italy, Jamaica, Japan, Kenya, Korea, Kyrgyz Republic, Kuwait, Latvia, Lithuania, Luxembourg, Madagascar, Maldives Islands, Malaysia, Malta, Mauritius, Mexico, Mozambique, Nepal, New Zealand, Pakistan, Poland, Rwanda, Russia, Saint Lucy, San Salvador, Seychelles, Slovenia, Slovakia, Spain, South Africa, Surinam, Tanzania, Thailand, Tagikistan, Trinidad and Tobago, Uachtarain, Ukraine, United States of America, Uruguay, Uzbekistan.

The replies have been published in their entirety in the 1996, 1998 and 2000 ICEF Reports.

Judge Amedeo Postiglione, an Italian Supreme Court Justice, is Director of the International Court of the Environment Foundation (ICEF), which he founded in 1988 as part of an extensive campaign for the creation of an international court of the environment based on a supranational legal character to provide access not only to states but also to associations and individuals. For more than 20 years he has been the untiring and enthusiastic mentor behind a global movement for the attainment of a human right to the environment, pioneered the use of legal information technology applied to the environment, and promoted the establishment of the Ministry of the Environment in Italy. Judge Postiglione is Co-ordinator of the Italian Supreme Court's Working Group "Ecology and Territory," Co-ordinator of the ENLEX Working Group, Head of the Legislative Office of the Italian Ministry of the Environment, Member of the IUCN Commission on Environmental Law, Professor of Environmental Law at La Sapienza University of Rome and the University of Urbino, Member of the International Academy of Lincei and Director of the International School of the Environment. He has published extensively, and his special interests include electronic processing of legal information, legal aspects of environmental protection, protected areas and environmental education.