

INTERNATIONAL COURT OF THE ENVIRONMENT YES - BUT IN WHICH FORM?

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To speak at a conference organised by the eminent Biopolitics International Organisation in Athens – the cradle of ethical and aesthetic values – about an International Court of the Environment or, better still, about an International Court for crimes against the environment, not only marks the necessity to discuss the existence of such an institution but, also, the best method for its implementation.

There are two directions to follow – without taking into consideration the different alternatives within each one: we can either imagine an autonomous court, established ad hoc to deal with the most serious of environmental crimes, or use the existing – or prospective – framework of international jurisdiction by inserting a new operative branch.

It is certain that, ideally, the first option is preferable. But the extreme difficulty of its realisation in a relatively brief period of time is evident, especially based on the fact that the approbation of the Charter of the International Criminal Court took almost fifty years. Initially, at least, we have to take into consideration the second option, that is to extend the existing framework of international jurisdiction. But, which framework?

Solutions involving the extension of international jurisdiction at the European level only must be discarded. Environmental defence needs a strong international dimension, and the jurisdiction to evolve must have global competence. In addition, civil and administrative affairs must remain the responsibility of international – as opposed to regional – organisations, such as the Permanent Court of Arbitration.

It seems that a more promising solution is offered by two important articles of the Charter of the International Criminal Court. More specifically, articles 121 and 123 which refer to amendments to the Charter and to the Charter's revision. The latter article calls upon the Secretary General of the United Nations to "summon a conference seven years following the enforcement of the present Charter [...] to examine amendments to the Charter." Every amendment proposal submitted is important to our goal. Article 121 regulates the chapter referring to the presentation of amendments to the Court's Charter.

Consequently, the longest one needs to wait to introduce an amendment to the present Charter, once it has been enforced, is seven years. Each member state can propose amendments to be communicated to the UN Secretary General, who will convey them, without delay, to all other member states.

Article 121 states that the adoption of an amendment requires ratification by two-thirds of the member states. Article 123 indicates that amendments can concern, notably, but not exclusively, the list of crimes featured in article 5, which deals with "crimes relevant to the Court's competence." We, therefore, need to be prepared to determine the most serious crimes against the environment with the aim of proposing an "additional amendment" to be adopted by the largest number of states possible. If the crimes brought before the Court are too many to be dealt with adequately in the framework of the existing structure, we could, and should, propose amendments concerning the Court's organisation – starting by an increase in the number of justices – until more sections are created. The Charter allows for such modifications.

Political will, as always, will play a fundamental role, but the global risks that humanity is currently facing have become so evident that only a state of total blindness could render us oblivious to them. This will have grave consequences. The challenge is, therefore, not only scientific, judicial, or social, but mostly political, ethical and aesthetic.

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