

PEACEFUL SETTLEMENT OF TRANSNATIONAL ENVIRONMENTAL CONFLICTS – WHY NOT BY AN INTERNATIONAL COURT OF THE ENVIRONMENT?

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Importance of judicial control

Most recent monitoring and data-collection systems evidence the increasing, frightening amount of threats and damage to the environment as well as environmental catastrophes with global, transnational/transboundary deleterious effects. Although endeavours at the national and international level to avoid and prevent environmental risks and infringements have intensified since the 1992 Rio Summit, alas the objective has not been adequately achieved. In particular, the daily ongoing pollution of the environment could at best be reduced, if not eradicated, not to mention accidental situations which can hardly be excluded.

Here is a unique challenge, *inter alia*, for national and international lawyers to alter this state. They have to offer innovative legal instruments such as progressive environmental laws and international agreements on the one hand and to guarantee their implementation and execution on the other. As we still, unfortunately, can attest to a huge deficiency in the application of legal norms, the tool of judicial control by independent institutions is indispensable and becomes more and more important at the national and international level as well.

National jurisdiction in Europe

There is no doubt that, in states possessing an advanced legal system and a developed mechanism of jurisdiction, judicial control plays a major role in the implementation and execution of environmental law. So, in Germany, according to a long-standing tradition in jurisdiction, potentially injured legal persons and individuals can rely on the lawful execution of national environmental law by claims brought to the competent courts. Judicial decisions can also promote legislation by constructive criticism on possible ambiguities of regulations. As far as litigation concerns only national matters of disputes and the application of national environmental law, the German judiciary system grants effective legal protection. But as soon as transboundary or transnational effects and objectives of international environmental law are at stake, national jurisdiction may be deficient or even fail. This is evidenced for instance by German case law concerning the cases of Chernobyl, Sandoz and of the nuclear power plant of Lingen,¹ to name a few.

All these reflect the general tendency that, in cases of transboundary/transnational pollution, the injured individual victims have no prospect of success and only a limited opportunity to bring an action against a foreign polluter, and specifically against a foreign polluter-state or its instruments before national courts.² Cases like the Dutch-French litigation concerning the salinisation of the Rhine river and the judgements of Austrian and Swiss courts in the case of Chernobyl or the cases of the nuclear power plants of Mochovce, Temelin in Slovakia, and Cattenom in France, as well as of the Slovenian Hydropower plant at Soboth, demonstrate the same tendency in almost all European states.³

The recent project of the American Society of International Law's Interest Group on "International Environmental Law in Domestic Courts," launched in 1997,⁴ examining for instance national judiciary in Australian, Canadian, Dutch, German, Indian, Japanese and U.S. Courts, also reiterates, that for the time being, international environmental law aspects are not sufficiently considered in depth and implemented by national courts. The exception is the Dutch judiciary.

At a symposium on the "Role of the Judiciary in Promoting the Rule of Law in the Area of Sustainable Development" held by UNEP and the South Asia Co-operation Environment Programme (SACEP), from 4-6 July 1997 at Colombo, Sri Lanka,⁵ it was recommended and emphasised that national judiciary has the responsibility to mould emerging environmental law principles – such as the polluter-pays-principle, the precautionary principle, the principle of continuous mandamus and of the erga omnes obligations – with a view to giving these a sense of coherence and direction.⁶

The published *Compendium of Summaries of Judicial Decisions in Environment Related Cases*⁷ also manifests the still existing deficiency in national jurisdiction in the application of international environmental law, which has to be changed. The conference further emphasised the problems of the "aggrieved person" and of *locus standi* in regard to environmental damage and liability, which need to be solved. As regards the practice of German courts, a distinction needs to be made between civil, public and criminal law cases. When it comes to litigation before civil courts of the polluted state, both claims for compensation and also actions to cease environmentally harmful and hazardous activities meet with failure.⁸ Moreover, meagre attention is paid to aspects of protecting the global commons.⁹ There are a number of reasons for this, including:

- Individuals mostly abstain from filing a lawsuit because of the potentially high costs and the problem of dealing with a foreign language.
- Immunity from jurisdiction may hinder the competence of the home-courts as well as of the court of the polluter-state.

- Pursuant to the rules on the law of conflicts or of the *ordre public*, the application of the substantive law can be excluded.
- Immunity from enforcement can bring down the enforcement of a foreign decision.

As regards lawsuits brought before the administrative courts of the polluter-state the *ius standi* can be problematic. In particular the application of the substantive law, dominated by the principle of territoriality, can be refused if it does not protect foreign legal interests. By reason of sovereignty, the home-court of the injured individual has no competence to examine public foreign law aspects. The polluter-state's court will argue that its decision cannot be enforced abroad by reason of immunity from enforcement.

With regard to environmental protection by the criminal courts, the German Supreme Criminal Court has emphasised in a case concerning the transboundary movement of hazardous waste from Germany to Poland that the German criminal law does not protect the legal interests of foreign injured individuals and will only apply to German territory.¹⁰

Accordingly, national judicial proceedings are still mostly ineffective because they lack the requisite powers and have to be further improved in matters concerning international environmental law. The long duration of litigation, lasting sometimes more than a decade – as with the Rhine river salinisation case, the Lingen case – also undermines legal protection. The protection of the global commons remains outside the scope of national jurisdiction and courts refuse, or are very reluctant to guarantee, these legal interests by an interpretation pursuant to public international law. Maybe such a task of interpretation demands too much from the national judge who is not so proficient in international law?

As a unique exception regarding the protection of the global commons and the implementation of the principles of intergenerational equity and responsibility, the decision of the Supreme Court of the Philippines in the famous Oposa-case of 1993 is worth of mention.¹¹ The plaintiffs, all minors, duly represented by their parents, successfully claimed to cease the continuing deforestation of the tropical rainforests, the indispensable natural resource for the life of present and future generations.

To summarise, in a country like Germany with an advanced legal system and highly developed jurisdiction, there still exists a deficiency in the application of international environmental law. No wonder that, in countries not having yet established a legal system, the lack of implementation will be infinite. Therefore, to support the development of a legal order and to promote national jurisdiction mechanisms according to international law principles, strong safeguarding should be offered by instruments and institutions of the international law level.

Concerning the judiciary, an international instrument, such as an international environmental court, postulated since 1988 by the International Court of the Environment Foundation (ICEF) in Rome¹² – could be the proper institution for the surveillance of the application of international regulations agreed to by environmental treaties. It could also give guidance to national courts on how best to apply international environmental law within the framework of national law. It is highly desirable in the future that such an international court be appealed to by NGOs, environmental interest groups, enterprises or individuals as well, or be addressed by national courts, to decide by procedure of preliminary decision or by interpretation, conflicts between international and national environmental law. Then its decisions would certainly have enormous impact and supporting influence on the further development of national environmental law and national judiciary as well.

Indispensability of judicial control in international environmental law

According to the theory of separation of powers, it belongs to the hallmarks of each democratic legal order that at least an independent judicial institution is empowered to control the legislative and executive instruments to guarantee the implementation, application and execution of law. Without such a mechanism, the existence of any legal system is endangered.

Accordingly, the need for a judicial institution at the national level is accentuated by principles 10 and 26 of the Rio Declaration¹³ which calls on states to provide "effective access to judicial and administrative proceedings, including redress and remedy." The ECE Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters of 25 June 1998 fulfils this task.¹⁴ The Aarhus Convention was signed by 40 countries and the European Community.

As to the international level, paragraph 39.10 of Agenda 21 emphasises, *inter alia*, the importance of the judicial settlement of disputes.¹⁵ It calls on states "to further study mechanisms for the effective implementation of international agreements, such as modalities for dispute avoidance and settlement." It identifies the full range of techniques, such as prior consultation, fact-finding, commissions of inquiry, conciliation, mediation, non-compliance procedures, arbitration and judicial settlement of disputes. There is a general consensus that all preventive instruments of dispute should be favoured in principle. The "political" non-confrontational mechanisms of the "compliance-procedure,"¹⁶ as well as of the "Conference of the Parties (COP)" need special attention.¹⁷ Regarding the Biodiversity Convention (CBD) for example, it should be mentioned that CBD does not contain a provision establishing a compliance regime.¹⁸ Instead, the COP-mechanism is favoured in Art. 23. In case an agreement cannot be achieved by further negotiation or a decision of COP, Art. 27 Para. 3 CBD provides for an agreed compulsory settlement of disputes, either by arbitration or submission of the dispute to the International Court of Justice. CBD also recognises the indispensability of a judicial control mechanism, if all modalities for dispute avoidance remain unsuccessful. Laudable though this approach may be, it must be stressed that these judicial instruments operate only as instruments of the states. NGOs or private third parties are not involved. They also cannot participate in the non-compliance procedure. But what is needed, in effect, in the future, is an institution which also provides NGOs, environmental associations and interest groups, enterprises and even individuals with direct access, thus controlling the activities of state instruments. Recently, this postulation has been supported by two Resolutions of the Institut de Droit International.¹⁹

A control of state activities by all parts of society is necessary, because states themselves may commit or tolerate environmental destruction.²⁰ State interests, in particular economic priorities, seldom coincide with those of the citizens and the environment.²¹ Therefore, states, not infrequently, refuse to support their injured nationals by means of diplomatic protection as, for instance, in the Chernobyl case. We must uphold the active engagement of NGOs, environmental interest groups and individuals as guardians of environmental matters, because of which daily environmental grievances are clearly highlighted – the introduction of toxic substances into rivers and the North Sea, nuclear tests on the Mururoa Atoll, etc. We must also recall the numerous activities of environmental organisations in the fields of nature protection and biodiversity. Unfortunately, due recognition for these activities is not always given. Does it have to be like this?

Nevertheless, one must be aware of the fact that even a tribunal or a court in the end cannot replace the will of states to effectively implement their obligations under international agreements because the competence of an international arbitrate or tribunal institution also depends on the will of the states – i.e., on an agreement or compromise. But decisions of a court and impending potential sanctions may press states to implement their obligations.

Judicial control by an international environmental court

The next question is whether one of the existing international courts meets the task of an international environmental court.

International Court of Justice (ICJ)

Although in 1993 it established an ad hoc chamber for environmental matters, the International Court of Justice cannot be the right forum, because states alone have direct access. This is regrettable because, by its very function, the ICJ could be the proper institution to control the implementation of environmental treaty obligations – as shown in the most recent Gabcikovo-Nagymaros case²² – to develop further and improve international environmental law and to concentrate on the urgent problems of protecting the global commons by applying the concept of erga omnes obligations. Sooner or later, under the influence of the current efforts and programmes of the State community to strengthen and enhance the legal position of NGOs, non-state-actors will also be granted legal access to the ICJ. But such a step would require states to relinquish sovereignty²³ and expose themselves to legal proceedings as a prerequisite. Such necessary reform of the ICJ Statute and of the UN Charter seems to be unrealistic at the moment.

International Tribunal for the Law of the Sea (ITLS)

As regards the protection of the marine environment, according to Art. 20 of the Statute of the Tribunal, the states parties to the Law on the Sea Convention²⁴ can submit disputes concerning interpretation and implementation of the regulations to the International Tribunal for the Law of the Sea, established in Hamburg in October 1996.²⁵ Pursuant to Para. 2 of Art. 20, the Tribunal is also open to "entities other than states" in cases provided for in Part XI of the Convention. This concerns the competence of the special Sea-Bed Disputes Chamber with regard to sea-bed activities. The Chamber can hear cases brought by or against, the International Sea-bed Authority, parties – including non-state parties – to a contract and prospective contractors.²⁶ The same provision extends further the jurisdiction *ratione personae* of the Tribunal in "any case submitted pursuant to any other agreement conferring jurisdiction on the Tribunal which is accepted by all the parties to that case".²⁷ According to Art. 187 Para. C, in connection with Art. 153, private natural persons only with the consent of a state can present the dispute to the chamber. In general it must be emphasised that Arts. 20 et seq. of the Statute only enable a limited jurisdiction in the field of the "Area" and do not go beyond. Also the term "entities"²⁸ still needs to be precisely defined by future jurisprudence of the Tribunal. Finally, it is doubtful, whether a comprehensive protection of the marine environment is actually granted, as evidenced, *inter alia*, by Art. 135 which "shall not affect the legal status of the waters superjacent to the Area or that of the air space above those waters." Meanwhile, the Tribunal has rendered three main judgements. Two of them concern the arrest of the ships M/V Saiga²⁹ and Camouco,³⁰ whereas the third ordered provisional measures for the catches of southern bluefin tuna³¹ against Japan. Marine pollution has not yet been the subject of a decision.

Court of First Instance and Court of Justice of the European Communities (ECJ)

In Europe, NGOs, enterprises and individuals have access to the Court of First Instance, established in 1988, and the Court of Justice of the European Community – also a court of appeals – if the interpretation of primary and secondary European environmental law or the correct implementation and application of EU-Regulations and Directives is concerned. But claims from legal and physical persons are admitted only if their rights are potentially injured directly and individually. This was stated by a judgement of the ECJ on 2 April 1998, when Greenpeace International and concerned residents claimed, in vain, against a subvention granted by the EU Commission for the establishment of two electricity-power-installations in Gran Canaria and Tenerife.³²

In general, the courts can be proud of an extensive case-load in environmental matters³³ but, according to the restricted regional field of application of European Law, their jurisdiction does not go as far as is desirable for global environmental protection. Nevertheless, the courts' importance for the further development of regional environmental law and general environmental principles remains unquestioned.³⁴

European Court of Human Rights (ECHR)

The recent jurisdiction of the European Court of Human Rights³⁵ paves new ways to improve environmental protection through an expanded concept of human rights and by linking two fields of law which traditionally have been treated separately. By its groundbreaking Lopez-Ostra

decision in 1994,³⁶ the Court has now opened the door for the protection of human rights against nearly all sources of environmental pollution, as opposed to just noise emissions and radiation, as was the case in the 1970s and 1980s.³⁷ This laudable progressive decision provides for a more comprehensive environmental protection of the individual and stimulates the discussion on the existence of a human right to a decent environment.

In 1988, Gregoria Lopez Ostra, living with her family close to Lorca in Murcia, Spain, suffered from emissions from a waste treatment plant built just 12 metres from her home on municipal property with a government subsidy. Foul smells and gas fumes causing health problems were emitted from the installation, which operated without a required permit. The family lived there until February 1992. Although in September 1988, the local council ordered cessation of some plant activities, the family continued to suffer health problems and noted a deterioration in the environment and quality of life. Doctors confirmed that Lopez Ostra's daughter suffered from nausea, vomiting, allergic reactions, bronchitis and anorexia because of her residence in a highly polluted area. Authorities for the Murcia region also reported health risks from the plant following many complaints from residents.

Lopez Ostra urged the municipality to find a solution to the nuisance, but in vain. Accordingly, she filed complaints with the Administrative Division of the Murcia Audiencia Territorial, the Supreme Court and the Constitutional Court. These applications were based on violations of fundamental rights under the Spanish constitution. Each of the courts rejected her complaints or found them inadmissible despite official reports of the health dangers. Two of Lopez Ostra's sisters-in-law, living in the same building, also brought administrative and criminal complaints. Although the courts in these proceedings ordered closure of the plant, the orders were suspended due to appeals. In February 1993, the family bought a new house and moved.

In May 1990, Lopez Ostra applied to the European Commission on Human Rights complaining that the local authorities' inaction violated her rights under the European Convention of Human Rights. She based her legal claims on Art. 8 of the Convention – protection of private life and family life – and Art. 3 – prohibition against torture and inhuman and degrading treatment – and claimed compensation. She asserted that the Spanish government failed to protect her privacy rights by maintaining a passive attitude toward the plant's disturbances. She also contended that the nuisance caused severe distress constituting degrading treatment.

The Commission, which found a violation of Art. 8 but rejected the Art. 3 claim, referred the case to the Court. The Court issued its decision on December 9, 1994, unanimously holding that the pollution from the plant and Spain's inaction violated Art. 8. It explained that States have both a positive duty to take measures to secure rights under Art. 8 and a negative duty to stop official interference. The Court stated that "the State did not succeed in striking a fair balance between the interest of the town's economic well-being – that of having a waste-treatment plant – and the applicant's effective enjoyment of her right to respect for her home and her family life." The judges rejected the claim based on Art. 3. The Court also observed that the applicant undeniably "sustained a non-pecuniary damage." In addition to the nuisance caused by gas fumes, noise and smells from the plant, she felt distress and anxiety as she saw the situation persisting and her daughter's health deteriorating. Therefore, Spain was held liable for four million pesetas in damages and more than one million pesetas for costs and expenses.

Altogether, the judgement shows its jurisprudential flexibility and willingness to view environmental infringements as human rights harms. It has also enhanced the legal protection of the environmental victim to claim against nearly all sources of pollution by applying Art. 8. But it should be borne in mind that the disadvantage relying solely on Art. 8 is that its Para. 2 can be the basis for restricting rights for reasons such as security, safety, morality or economics. Thus, it is desirable to deliberate the possibility of strengthening the individual's environmental position in the future by applying the right to life – Art. 2 – or the right to physical integrity and health – Art. 3, because neither of these provisions are subject to broad exceptions. It is commendable that the Court has also promoted the concept of state liability, which has been debated by the UN International Law Commission for over 30 years and which still remains unsolved.

By its recent judgement in the Muhleberg – Canton of Berne, Switzerland – nuclear power station case of 1997, the Court regrettably has not pursued or even extended its progressive judiciary.³⁸ In this case, the applicants – living within a radius of four or five kilometres from the nuclear power station – appealed against the extension of the nuclear installations' operating license for an indefinite period and maintained that the power plant did not meet current safety standards. The applicants argued that they were exposed to a risk of accident which was greater than usual and had been affected in their civil rights. They also stressed the lack of access to a Swiss Court when attacking the decision of the Federal Council – executive, administrative authority – and pretended a violation of Arts.6 and 13 of the European Convention on Human Rights.

By twelve to eight votes the Court rejected the applicants' objections. It upheld, that the applicants "did not establish a direct link between the operating conditions of the power station which were contested by them and their right to protection of their physical integrity, as they failed to show that the operation of the Muhleberg power station exposed them personally to a danger that was not only serious but also specific and, above all, imminent."³⁹

The repercussion on the population, therefore, remained hypothetical. It is remarkable that the dissenting opinions of eight judges with regard to the proof of a link and of a potential danger have emphasised that the majority of the judges "appear to have ignored the whole trend of international institutions and public international law towards protecting persons and heritage, as evident in European Union and Council of Europe instruments on the environment, the Rio agreements, UNESCO instruments, the development of the precautionary principle and the principle of conservation of common heritage."⁴⁰ These judges also underlined the importance of the Convention on Civil Liability for Damage Resulting from Activities Dangerous to the Environment⁴¹ stressing the special hazards of certain installations, which need to be obviated by new international law measures and through the exercise of effective remedies.

Such statement is praiseworthy and encouraging. It facilitates that, in the future, judges will take into account these new trends in international environmental law and thereby pursue the progressive Lopez-Ostra judiciary. But alas, in general, decisions in the field of nuclear energy aspects follow their own rules because of their political importance. Therefore, it was not a surprise that in its most recent judgement of 6. April 2000 concerning the Swiss nuclear power plant Beznau II⁴² – which was nearly identical with the Muhleberg case – the court has rejected again the claim of neighbours against the operating license, stressing that the applicants failed to prove being personally directly exposed to an imminent nuclear risk.

Despite this decision, the main problem of direct access to the ECHR still remains. Individuals are allowed access only after exhausting all local remedies, i.e., all stages of jurisdiction of their home-state. Such a time-consuming, thorny process considerably blocks the protection of environmental human rights.

International Criminal Court (ICC)

A conceivable perspective for the future could perhaps also be the International Criminal Court which was established on 17 July 1998 by the United Nations Diplomatic Conference in Rome.⁴³ According to Art. 5 of its Statute,⁴⁴ the Court has jurisdiction for the most serious crimes of concern to the international community as a whole. Those crimes are the crime of genocide, crimes against humanity, war crimes, as well as the crime of aggression. The fixation of a highly desirable, autonomous, explicit jurisdiction in environmental matters by extending the list of crimes to "crimes against the environment," as ruled for instance in Art. 19(d) of the ILC's Draft Articles on State Responsibility,⁴⁵ regrettably failed to gain support in the deliberations to the Statute.

During the work of the Preparatory Committee on the Establishment of an ICC, a large majority of states wanted to limit the jurisdiction of the ICC to the core crimes mentioned and refused to include the so-called "treaty-crimes."⁴⁶ Instead of this, it was decided to insert environmental aspects in a modified form under the heading of either a crime against humanity or a war crime. Art. 8, Para. 2, lit. b (iv) of the Statute defines as a war crime "intentionally launching an attack in the knowledge that such attack will cause incidental loss of life or injury to civilians or damage to civilian objects or widespread, long-term and severe damage to the natural environment which would be clearly excessive in relation to the concrete and direct overall military advantage anticipated." Although this regulation does not grant a comprehensive protection of all elements of the environment, in general, this approach, as a preliminary step, is in the right direction. The extension of the ICC's jurisdiction to prosecute environmental crimes could be on the agenda again in the near future, if environmental crimes cannot be stopped and steadily increase, and also if, at a propitious moment, Art. 19 (d) – the Draft Article on State Responsibility – would become binding treaty law.

Although the "criminal approach" is based on "individual responsibility," this concept could also easily be extended to responsibility of state instruments. The Criminal Court's competencies, in general, need not be regarded as competing with the pursuits of the other courts mentioned, because of its specific criminal law approach. On the contrary, in combination with the other international courts and acting as a complement to them, an effective basis to fight international environmental pollution could be developed. But this target can only be achieved if NGOs and individuals have legal access as well.

To sum up, at the moment, the existing, above-mentioned international courts cannot offer an optimum solution for the protection of the environment and the injured individual. They can only play an important, desired, and complementary role. Therefore, the Permanent Court of Arbitration (PCA) is proposed here as the appropriate forum to settle environmental disputes.

Permanent Court of Arbitration (PCA) as the appropriate forum

Until an International Environmental Court with mandatory jurisdiction comes into existence, the Permanent Court of Arbitration (PCA), in The Hague, could be the appropriate forum to settle environmental disputes. This idea was born at the First Conference of the Members of the Court in September 1993.⁴⁷ The present author introduced it at the ICEF Conference in Venice in 1994,⁴⁸ where this idea found strong support, inter alia, from the Secretary General of the International Bureau of the PCA.⁴⁹ From this time on, the potential role of the PCA in environmental matters was on the agenda of all subsequent ICEF Conferences held in Rome, in 1995, and Paestum, in 1997,⁵⁰ as well as on the Berlin Alternative Climate Change Conference, in 1995. There are a good number of reasons which favour the PCA.

First, this institution, having its roots in the Hague Peace Conferences of 1899 and 1907, in particular the Conventions for the Pacific Settlement of International Disputes, is well recognised and accepted by numerous UN Member States.

Second, it is a very flexible and unique institution, because it offers facilities for four of the dispute-settlement methods listed in Art. 33 of the UN Charter, i.e., inquiry, mediation, conciliation and arbitration.

As regards conciliation the PCA established, in 1996, new Optional Conciliation Rules,⁵¹ enabling the Parties, including States, International Organisations, NGOs, companies and private associations to use this mechanism. The Rules are based on the UNCITRAL-Conciliation Rules⁵² and can be linked with possible arbitration.

Concerning arbitration, the Court adopted, in 1992, Optional Rules for Arbitrating Disputes between Two States,⁵³ and, in 1993, Optional Rules for Disputes between Two Parties of Which Only One is a State.⁵⁴ Consequently, disputes between a non-state-actor and a state can be submitted to the Court. In May 1996, the set of Optional Rules was extended on Rules for Arbitration involving International Organisations and States,⁵⁵ as well as between International Organisations and Private Parties.⁵⁶ By widening its jurisdiction to all Parties of the community of states, including

organisations, and all members of society, it goes far beyond the competence of the International Court of Justice.

In June 1996, a Working Group on Environmental and Natural Resources Law, established by the PCA, discussed a background paper on "Environmental Disputes and the Future Role of the PCA."⁵⁷ The representatives of governments from Australia, Brazil, China, India, the Russian Federation and Samoa, unanimously favoured using the PCA as the appropriate judicial instrument to settle environmental disputes and to promote international environmental law. It was decided that the PCA should instigate a publicity campaign to draw attention to its new role in the context of environmental protection. At the follow-up meeting, on 24 February 1998, the Working Group discussed whether there is need or not to amend and make precise the Optional Rules by special environmental regulations or to draft completely new procedural rules for the dispute settlement of environmental matters.⁵⁸ It was decided to formulate new rules. Since February 1999, the present author has started to frame PCA Procedural Rules for the Environment. The First Provisional Draft of March 1999⁵⁹ co-ordinates the multifarious mechanisms of fact-finding/inquiry, mediation, conciliation and arbitration, and stresses the advantages of a fact-finding commission of inquiry which can be used in a supportive way in the conciliation – as well as in the arbitration-procedure. The "non-compliance" procedure is incorporated in the mediation and conciliation process. In May 2000, the Secretary General decided to finalise the rules for arbitration at first and to submit them to the Administrative Council of the PCA in October of the same year. Details will be presented later.

Third, the important issue of the extra financing required for a new Court for the Environment speaks in favour of the PCA with an existing administrative and logistical infrastructure. The costs of arbitration proceedings are borne by the parties. Besides, the PCA Financial Assistance Fund for the Settlement of International Disputes of 1995 grants financial support to such State which needs financial help to meet the costs involved.⁶⁰ In the future, this model should be extended also to non-state-actors.

Fourth, the flexibility of the Court with regard to the place of arbitration should also be noted. In transnational environmental litigation, in particular, this place can be important in terms of providing evidence of the harm which has occurred. The parties can agree on it. Where there is no agreement, the arbitration shall take place in The Hague, the seat of the PCA.

Fifth, it is very advantageous that the PCA is very experienced in matters of trade law, investment law and socio-economics which it can combine with environmental aspects. To take into account the interdependence of all these fields is indispensable in our world of globalisation.

Although the PCA would be the proper institution to settle environmental disputes, one must bear in mind that it is only by an agreement of the parties or by compromise, that the competence of the Court can be established. If the parties are states or only one is a state, this huge impediment must be overcome. Ultimately, submitting a dispute to the court depends on the political preparedness of a state. Therefore, the arduous task of convincing governments to support the idea of an International Environmental Court has yet to be undertaken. It would constitute huge progress if the states would rule in future environmental treaties the competence of the PCA by a special dispute settlement clause, as done for instance in the Bonn Convention of 1979 on the Conservation of Migratory Species of Wild Animals⁶¹ and foreseen in the IUCN 1995 Draft International Covenant on Environment and Development.⁶² In 1998, the PCA had already developed guidelines for negotiating and drafting such dispute settlement clauses.⁶³

Nevertheless, what is encouraging is the increasing number of arbitral decisions of the PCA, as manifested, for instance, by proceedings between an African State and two foreign investors and between an Asian State and a foreign enterprise.⁶⁴ For the first time, the Optional Rules for Arbitrating Disputes between Two Parties of which only One is a State were applied by an award of 25 November 1996 in a dispute between Technosystem SpA, Italy, on the one side and Taraba State and Nigeria on the other.⁶⁵

Also encouraging is a resolution which was unanimously accepted by George Washington University's (GWU) Institute for the Environment, The International Court for the Environment Foundation (ICEF), the Centre for International Environmental Law and the American Bar Association's Section of Natural Resources, Energy and Environmental Law on the Environmental Law Conference of GWU, held April 15-17, 1999 in Washington D.C.⁶⁶ The resolution, *inter alia*, states:

- There is an urgent need for the immediate establishment of an International Environmental Court to resolve transnational and international disputes in environmental matters, and thereby to conserve and protect the global environment and all species from further degradation and extinction.
- There is a fundamental human right to a healthy environment that can be protected through the establishment of an International Environmental Court.
- Until an International Court for the Environment is established with mandatory jurisdiction, the Permanent Court of Arbitration in The Hague should be the competent institution for the settlement of disputes by using its flexible mechanisms of fact finding/inquiry commissions, mediation, conciliation and arbitration, according to its set rules of procedures.

On 21 April 1999, the "Washington Results" were also presented to the representatives of the governments attending the 7th Session of the UN Commission on Sustainable Development, held at the United Nations in New York. At a press conference, held at the UN Correspondents Association on the same day, the public at large was informed about the actual state of the programme for the establishment of an International Environmental Court.

On the occasion of the centennial celebration of the PCA, the Second Conference of the Members of the Permanent Court of Arbitration adopted a

resolution on May 17, 1999. This resolution generally "welcomes the evolution of the PCA into a modern multi-faceted institution providing a wide variety of dispute resolution services to the international community,"⁶⁷ as reflected, *inter alia*, by the set of Optional Rules mentioned. With regard to environmental law aspects, the resolution "calls upon the Secretary General and the International Bureau of the PCA to vigorously pursue their recent initiatives to expand the Court's role as recommended by the Members of the Court at their First Conference, including those in the area of environmental disputes, taking into account the entire range of international dispute resolution mechanisms administered by the Court."⁶⁸

According to this mandate, the Secretary General of the PCA and the Working Group decided, in May 2000, to finalise, at first, the Rules for Arbitration. The drafting of special Optional Rules for fact-finding/inquiry, conciliation and mediation procedures will be planned at a later stage. On 10 October 2000, the Draft Optional Rules for Arbitration of Disputes Relating to Natural Resources and/or the Environment⁶⁹ were prepared and transmitted for consideration and approval to the Administrative Council of the PCA, represented by 91 governments of the PCA Member States. The Rules are structured into four main sections regulating the Introductory Rules – Section I, Arts. 1-4 – the Composition of the Arbitral Tribunal – Section II, Arts. 5-14 – the Arbitral Proceedings – Section III, Arts. 15-30 – and the Award – Section IV, Arts. 31-41. The Rules are joined by an Explanatory Memorandum.

The Draft Rules which seek to address the principal lacunae in environmental dispute resolution contain the following significant innovations:

- As the introduction emphasises, the rules will be available for the use of all parties who have agreed to apply them. This means that states, inter-governmental organisations, non-governmental organisations, and private entities, including *inter alia* corporations, companies, environmental interest groups and individuals, can have recourse to the forum offered. Thus the rules permit greater flexibility in the number and nature of the parties than currently exists elsewhere.
- In order to rapidly provide both scientific and juridical resources to the parties seeking resolution of a dispute, the rules provide for the optional use of: (a) a panel of environmental scientists nominated by the Member States and the Secretary General, respectively, who can provide expert scientific assistance to the parties and the arbitral tribunal – Art. 27(5); (b) a panel of arbitrators with experience and expertise in environmental or conservation of natural resources law nominated by the Member States and the Secretary General, respectively – Art. 8(3).
- Where arbitration deals with highly technical questions, provision is made for the submission to the tribunal of a document agreed on by the parties, summarising and providing background to any scientific or technical issues which they wish to raise in their memoranda or at oral hearings – Art. 24(4).
- The tribunal is empowered, unless, in their compromise the parties chose otherwise, to order any interim measures necessary to prevent serious harm to natural resources and the environment – Art. 26(1-3).
- Because time is of the essence in environmental disputes, the rules provide for arbitration in a shorter period of time than under previous PCA Optional rules or the UNCITRAL rules. The tribunal itself can be constituted rapidly because, if the parties cannot agree on arbitrators, the Secretary General can appoint them, rather than designating an appointing authority as is the case with UNCITRAL.
- Measures to protect the confidentiality of information provided by the parties are specifically described in Art. 15(4),(5),(6). These powers were previously deemed to be inherent to the tribunal; the description in the rules of an optional mechanism for resolving confidentiality issues is intended to save the time required if the tribunal and/or the parties were to design a system to insure accountability for confidentiality.

The Draft certainly needs further consideration, deliberations and amendments. First reactions, especially of Members of the Working Group, show that, *inter alia*, the problems of "exhaustion of local remedies" and "waiver of immunity" must be intensified. Also, the crucial aspects of legal access and *ius standi* of "non-state-actors" and individuals could be more emphasised by precise definitions, as stressed by the existing very wide formulation "private parties or other entities."

Nevertheless, the Draft Rules go in the right direction. These contain a lot of innovative instruments which will contribute to an enhanced judicial control concerning the application of environmental law and strengthen the legal position of the individual victims of deleterious environmental activities. It is also planned by the Secretary General to explain the aim and contents of the various Articles by a comprehensive Commentary at a later stage.

Conclusion

For the protection of the environment, the endangered global commons and the threatened or injured individuals in cases of transboundary/transnational pollution, an International Environmental Court is indispensable. The national courts, as illustrated by German and European jurisdiction, are still most ineffective. As regards the international level, courts such as the ICJ, ITLS, the Courts of the European Communities, the ECHR and ICC cannot offer an optimum solution either. They either do not have a comprehensive competence to protect the environment sufficiently, or cannot guarantee the rights of NGOs or individuals, because of lack of legal access.

Nevertheless the international courts mentioned are a prerequisite for the development of international environmental law. They can also play a very important complementary role in supporting the work of the PCA, which for the time being, could be the right forum.

By its recent Draft Optional Rules for Arbitration of Disputes Relating to Natural Resources and/or the Environment, this Court offers new innovative instruments for effective control of the application of national and international environmental law, as well as for the participation of "private parties" and other "non-state-actors" in the dispute resolution process. It thereby takes into account the increasing importance of NGOs, environmental interest groups and individuals in the field of environmental protection. "NGOs play a vital role in the shaping and implementation of participatory democracy," as stressed *inter alia* by Agenda 21, Chapter 27. Transnational environmental problems can effectively be solved only by all parts of national and international society. States need this co-operation and support of private institutions. These private elements must be merged in inter-state mechanisms, especially in international environmental treaties, to give them a real chance of efficient contributions in decision-making, as well as in implementing international environmental law. States must co-operate with non-state actors, albeit with the limitation of their sovereignty.

As to judicial control, NGOs, companies and individuals should, in the future, be granted an *ius standi*, as incorporated by the PCA Draft Optional Rules. This target could also be achieved and supported by the addition of dispute settlement clauses in environmental agreements. In general, as reiterated, a judicial instrument is indispensable for the surveillance of the implementation of treaty regulations, if preventive mechanisms, such as compliance- and COP-systems, fail. By the control of an international environmental court, the implementation and application of international environmental treaty- law could additionally be sustained and enhanced.

The forcible demand for an International Environmental Court now draws world-wide support.⁷⁰ Besides the PCA, ICEF Rome, ICEF North-America, the American Bar Association, the Biopolitics International Organisation,⁷¹ George Washington University and several Governments,⁷² in particular those of developing countries, to mention but a few, in Germany, this idea is supported by Eurosolar – an NGO – numerous lawyers and academics, environmental interest groups and the University of Cologne. The German Federal Government, of course, will concur with this idea. What is needed is to convince the governments to get possession of the political will for the establishment of such a court. The increasing destruction of the environment, the growing consciousness of the public, as well as the progressive role of NGOs, will stress this procedure. All that remains to be done is to acknowledge categorically the indispensability of an International Environmental Court⁷³ with mandatory jurisdiction and to bring that court into existence. To act swiftly, the PCA as an arbitral tribunal could start working in the field of the protection of natural resources and the environment, and gain the initial practical experience necessary.

References

1. To these and further cases see A. Rest, International Environmental Law in German Courts, in: Environmental Policy & Law (EPL) 1997, p. 409
2. A. Rest, The Need for an International Court for the Environment: Underdeveloped Legal Protection of the Individual in Transnational Litigation, in: Towards a World Governing of the Environment, IV. International Conference 2-5 June, Venice, (G. Cordini/A. Postiglione, eds.) Pavia 1996, p. 591
3. For details see A. Rest, The Need for an International Court for the Environment, in: EPL 1994, pp. 173; for further cases cf. M.R. Albus, Zur Notwendigkeit eines Internationalen Umweltgerichtshofs - zugleich eine Analyse der Staatenpraxis zum Internationalen Umwelthaftungsrecht und der Rechtsschutzmöglichkeiten bei grenzüberschreitenden Umweltbeeinträchtigungen, in: (Vol. 12) Kolner Schriften zu Recht und Staat, Peter Lang Publishing Company, Frankfurt/Main 2000
4. Cf. Workshop of the ASIL Interest Group for Environmental Law of 9 April 1997, Washington, D.C. The preliminary Report of national jurisdiction in the various countries is partially published in: Review of European Community & International Environmental Law (RECIEL) vol. 7, issue 1, 1998, pp. 63
5. For details see L. Kurukulasuriya, Role of Judiciary in Promoting Sustainable Development, in: EPL 1998, pp. 27
6. EPL 1998, p. 28
7. Cf. Compendium of Summaries of Judicial Decisions in Environment Related Cases with special Reference to Countries in South Asia, in: SACEP/UNEP/NORAD Publication Series on Environmental Law and Policy No. 3, 1997
8. For the numerous decisions see A. Rest, International Environmental Law in German Courts, in: EPL 1997, pp. 412; for litigation in the 50s and 60s cf. A. Rest, The more Favourable Law Principle in Transfrontier Environmental Law - A Means of Strengthening the Protection of the Individual, in: Beitrage zur Umweltgestaltung, Berlin 1980, pp. 69
9. For a discussion on global commons, common heritage, common concern and interest, and erga omnes obligations cf. A. Rest, Ecological Damage in Public International Law, in: EPL 1992, pp. 31
10. To this and other criminal law cases cf. A. Rest, International Environmental Law in German Courts, EPL 1997, pp. 419
11. The decision in re Minors Oposa versus Secretary of the Department of Environment and Natural Resources (DENR) of 30 July 1993 is published in: (33) International Legal Materials (ILM) 1994, pp. 173; A. Rest, The Oposa Decision: Implementing the Principles of

Intergenerational Equity and Responsibility, in: (24) EPL 1994, pp. 314

12. To such postulation of environmental lawyers, judges and environmental protection associations cf. A. Rest, Zur Notwendigkeit eines Internationalen Umweltgerichtshofes, in: Liber Amicorum in honour of Prof. I. Seidl-Hohenveldern (G. Hafner/G. Loibl/A. Rest/L. Sucharipa-Behrmann/K. Zemanek, eds.) The Hague/London/Boston, Kluwer Law International, 1998, pp. 575, 577

13. ILM 1992, pp. 876

14. ECE Doc. ECE/CEP/43 of 25 June 1998; the text of the agreement is also published in: W. Burhenne, International Environmental Law, Multilateral Treaties, (loose-leaf-collection, 2000) under No. 998:48

15. Cf. Agenda 21: Earth's Action Plan, (N.A. Robinson, ed.) IUCN Environmental Policy & Law Paper No. 27, 1993, p. 626

16. To the details of "compliance procedure" in the various international environmental treaties see P. Szell, Compliance Regimes for Multilateral Environmental Agreements - A Progress Report in: EPL 1997, pp. 304; W. Lang, Compliance-Control in International Environmental Law: Institutional Necessities, in: (56) Zeitschrift für Ausländisches Öffentliches Recht und Völkerrecht (ZaoRV) 1996, pp. 685, P.H. Sand, Institution Building to Assist Compliance with International Environmental Law: Perspectives, in: (56) ZaoRV 1996, pp. 774; pp. 786-788; p. 793

17. Art. 6 of the Convention for the Protection of the Ozone Layer (ILM 1987, pp. 1516) has incorporated the COP-mechanism as well. Together with the amending Montreal Protocol on Substances that deplete the Ozone Layer (ILM 1987, pp. 1541) this mechanism is combined with the non-compliance-procedure ruled in Art. 8

18. Cf. to this statement P. Szell, EPL 1997, p. 305

19. Institut de Droit International, Session de Strasbourg, Resolution on Environment, adopted 3. Sept. 1997; cf. Art. 11; Resolution on Responsibility and Liability under International Law for Environmental Damage, adopted 4. Sept. 1997; Articles 26-28. The text of both Resolutions is published in: Annuaire IDI, vol. 67 II, 1998, pp. 476

20. Example: the forest burning in Indonesia was tolerated by the government, although the existing law prohibited such activities. For the details and further examples see A. Rest, Zur Notwendigkeit eines Internationalen Umweltgerichtshofes, (note 12) pp. 575, 579

21. On several occasions this was pointed out by A. Postiglione, The Global Village without Regulations. Ethical, Economical, Social and Legal Motivations for an International Court of the Environment, (ICEF, Florence 1992) pp. 24 and A. Rest, The Indispensability of an International Environmental Court, in: RECIEL 1998, pp. 63-64

22. See the judgement of 25 Sept. 1997 which has conciliation character, Case Concerning the Gabcikovo-Nagymaros Project between Hungary and Slovakia in: ICJ Reports No. 92; to further details cf. A. Rest, Zur Notwendigkeit eines Internationalen Umweltgerichtshofes, (note 12) p. 581

23. What is necessary is a new understanding of sovereignty which can meet the environmental challenges of our world in transition. Cf. S. Bhatt, Ecology and International Law, in: Indian Journal of International Law 1982, pp. 422

24. ILM 1982, pp. 1261; Cf. the Statute according to Annex VI, (21) ILM 1982, pp. 1345

25. R. Wolfrum, Der Internationale Seegerichtshof in Hamburg, in: Vereinte Nationen 1996, pp. 205; T. Treves, The Law of the Sea Tribunal: Its Status and Scope of Jurisdiction after November 16, 1994, in: (55) ZaoRV 1995, pp. 421

26. T. Treves, (55) ZaoRV 1995, p. 428

27. Cf. Art. 20, second sentence and also Art. 21, (21) ILM 1982, p. 1348

28. For the Definition of „entities" cf. Art. 1 Para. 2 and Art. 305 paras. 1 b, c, d, e and f UNCLOS

29. For the judgements and order of provisional measures in the litigation between Saint Vincent and the Grenadines v. Guinea in 1997, 1998, and 1999 see: (37) ILM 1998, pp. 362; (38) ILM 1999, pp. 1323

30. For the judgement of 7 February 2000 in this case (Panama v. France) cf. Press Release ITLOS Press 35 <http://www.un.org/Depts/los/Press/ITLOS/ITLOS-35.htm>

31. For the details of the order of 27 August 1999 see list of cases Nos. 3 and 4: <http://www.un.org/Depts/los/ITLOS/Order-tuna34.htm>

32. For the judgement in re C-321/95 P cf. E.C.R. 1998, Part I, pp. 1651; pp. 1702

33. For further examples of ECJ-decisions cf. E. Hey, The European Community's Courts and International Environmental Agreements, in: RECIEL 1998, pp. 4; L. Kramer, Die Rechtsprechung des Gerichtshofs der Europäischen Gemeinschaften zum Umweltrecht 1992-1994, in: Europäische Grundrechte Zeitschrift (EuGRZ) 1995, pp. 45

34. For the judgements in the cases of the electricity power stations in Gran Canaria and Teneriffa and the nuclear test cases on the Mururoa-Atoll cf. A. Rest, *Friedliche Streitbeilegung internationaler Umweltkonflikte durch den Ständigen Schiedshof. Seine zukünftige Rolle als internationaler Umweltgerichtshof*, in: *Die Macht des Geistes*, In honour of H. Schiedermaier, (Dorr/Fink/Hillgruber/Kempen/Murswiek, eds.) C.F. Muller Publishing Company Heidelberg, will be published in January 2001, at pp. 937, 956
35. For a survey see A. Rest, *Improved Environmental Protection Through an Expanded Concept of Human Rights*, in: *EPL 1997*, pp. 213; *idem*, *Europäischer Menschenrechtsschutz als Katalysator für ein verbessertes Umweltrecht*, in: *Natur und Recht (NuR) 1997*, pp. 209
36. *Lopez-Ostra v. Spain*, ECHR Series A, Vol. 303/C
37. See for the judgements against noise pollution concerning the airports Gatwick (*Arondele v. UK*) and Heathrow (*Baggs, Powell and Rayner v. UK*) and other cases A. Rest, *Improved Environmental Protection Through an Expanded Concept of Human Rights*, in: *EPL 1997*, pp. 213; p. 215
38. The judgement of 26 August 1997 in the case of *Balmer-Schafroth and Others v. Switzerland* is published in: *European Court of Human Rights, Reports of Judgements and Decisions*, No. 43, 1997, pp. 1347; for a critical review see A. Kley, *Gerichtliche Kontrolle von Atombewilligungen*, in: (26) *EuGRZ 1999*, pp. 177
39. Cf. *Reports of Judgements and Decisions*, No. 43, 1997, p. 1359 under Para. 40
40. For the dissenting opinion of Judge Pettiti, joined by the Judges Golcuklu, Walsh, Russo, Valticos, Lopes Rocha and Jambrek and of Judge Foighel; cf. *Reports of Judgements and Decisions*, No. 43, 1997, pp. 1361, 1367. The statement quoted is at p. 1363
41. Convention of 21 June 1993, in: (32) *ILM 1993*, pp. 1228
42. Judgement in the Case of *Athanassoglou and Others v. Switzerland* of 6 April 2000, (Application no. 27644/95)
43. Cf. Press Release L/ROM/22 of 17 July 1998 edited by the UN Diplomatic Conference, Rome
44. The text of the Statute of 17 July 1998 is published in: *Rome Statute of the International Criminal Court*, (Ch. Rosbaud/O. Triffterer, eds.) Nomos Publishing Company, Baden-Baden 2000
45. Art. 19(d) provides: "the serious breach of an international obligation of essential importance for the safeguarding and preservation of the human environment, such as those prohibiting massive pollution of the atmosphere or of the seas" as an international crime. Cf. *Yearbook of the International Law Commission (YILC) 1980*, Vol. II, Part Two, pp. 30; at p. 32
46. Cf. O. Triffterer (ed.) *Commentary on the Rome Statute of the International Criminal Court, Observers' Notes, Article by Article, Annotation to Art. 5*, p. 98, Nomos Publishing Company, Baden-Baden 1999
47. Cf. *Permanent Court of Arbitration, First Conference of the Members of the Court*, 10 and 11 September 1993, (PCA/Stichting T.M.C. Asser Instituut, eds.) The Hague 1993; see in particular *Background papers of: Ion Diaconu*, pp. 94, 96; *Prince Bola Ajibola*, pp. 98, 99
48. A. Rest, *The Need for an International Court for the Environment. Underdeveloped Legal Protection for the Individual in Transnational Litigation*, in: *Towards the World Governing of the Environment, IV. International Conference 2-5 June 1994, Venice*, (a cura di A. Postiglione) Pavia 1996, pp. 178
49. See P.J.H. Jonkman, *Resolution of International Environmental Disputes: A Potential Role for the Permanent Court of Arbitration*, in: *Towards the World Governing of the Environment*, Pavia 1996, at pp. 435
50. The contributions are collected in: *VII International ICEF Conference, Ambiente e Cultura, Patrimonio Comune dell' Umanita, Paestum 6/10 Giugno 1997* (G. Cordini/A. Postiglione, eds.) Naples 1999; Cf. *ibid.*: A. Ragalmuto, *The Necessity of New Initiatives for Environmental Protection considering an International Court of Environment*, pp. 435; A. Rest, *The Indispensability of an International Court for the Environment*, pp. 39
51. PCA, *Optional Conciliation Rules of 1 July 1996*. All Optional Rules concerning Conciliation and Arbitration are published by the Secretary General and International Bureau of the PCA, Peace Palace, The Hague, in: *Basic Documents, Conventions, Rules, Model Clauses and Guidelines*, 1998
52. The Rules of the United Nations Commission for International Trade of December 1976 are published in: A. Bulow/K.H. Bockstiegel/R. Geimer/R. A. Schutze, *Der Internationale Rechtverkehr in Zivil- und Handelssachen*, Vol. II, loose-leaf-collection, 1997, under No. 753
53. *Optional Rules of 20 October 1992*, in: *PCA Basic Documents*, pp. 41

54. Optional Rules of 6 July 1993, in: PCA Basic Documents, pp. 69
55. Optional Rules of 1 July 1996, in: PCA Basic Documents, pp. 97
56. Optional Rules of 1 July 1996, in: PCA Basic Documents, pp. 125
57. Environmental Disputes and the Permanent Court of Arbitration: Issues for Consideration, Background Paper for the Secretary General of the PCA prepared by P. Sands, (FIELD, March 1996)
58. Cf. Protocol of P.J.H. Jonkman, Secretary General of PCA of 19 May 1998, Procedural Rules for the Settlement of Environmental Disputes Before The Permanent Court of Arbitration - Summary of views expressed during a discussion held at the Peace Palace on February 24, 1998
59. Not yet published
60. Cf. PCA Financial Assistance Fund for Settlement on International Disputes, Terms of Reference and Guidelines as approved by the Administrative Council on December 11, 1995, in: PCA, Basic Documents, pp. 233
61. Cf. Art. XIII of the Convention of 23 June 1979, in: (19) ILM 1980, pp. 15;26
62. See Art. 62 Para. 2 of the Draft International Covenant on Environment and Development of the World Conservation Union in co-operation with the International Council of Environmental Law, in: Environmental Policy and Law Paper No. 31, Gland/Cambridge 1995; the second edition: updated text, has been published under IUCN Environmental Policy and Law Paper No. 31 Rev., 2000
63. Cf. Guidelines for Negotiating and Drafting Dispute Settlement Clauses for International Environmental Agreements, prepared by P. Sands and R. MacKenzie, International Bureau of PCA, The Hague, January 1998
64. Cf. PCA, 96th Annual Report, Nos. 18-22, at p. 9
65. PCA, 96th Annual Report, No. 21, at p. 9; for further decisions see: The Permanent Court of Arbitration: International Arbitration and Dispute Resolution. Summaries of Awards, Settlement Agreements and Reports (P. Hamilton/H.C. Requena/L. van Scheltinga/B. Shifman, eds.) The Hague/London/Boston 1999
66. The Conference was titled: Is There A Need For A Body To Resolve International Environmental Disputes? Why, What, and How ?
67. Cf. Para. 4 of the Resolution, which will be published in: PCA, International Alternative Dispute Resolution: Past, Present and Future, winter 2000
68. Para. 9 of the Resolution
69. The Draft is still confidential and not published yet
70. For the numerous recommendations coming from 54 States and several International Organisations see: The Global Demand for an International Court of the Environment, International Report 1998 of the International Court of the Environment Foundation (ICEF) Rome 1998
71. See A. Vlavianos-Arvanitis, Coping with environmental emergencies and disasters, in: BioNews, (No. 22) April 2000
72. Cf. for the statements: International Report 2000. The Global Demand for an International Court of the Environment, (A. Postiglione, ed.) ICEF, Naples 1999
73. For the arguments showing that the establishment of a separate International Environmental Court is not the most desirable option, see E. Hey, Reflections on an International Environmental Court, in: Kluwer Law International 2000, pp. 2

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