



ICE Coalition

Creating the International
Court for the Environment

"It is a trite observation that environmental problems, although they closely affect municipal laws, are essentially international; and that the main structure of control can therefore be no other than that of international law".

(Sir Robert Jennings QC, former President of the International Court of Justice, 1995)

Environmental problems extend across international boundaries, but there are no effective international institutions to deal with them properly. The result: the problems worsen and attempts by countries to solve them fail due to the lack of an institutional framework within which to build an international consensus.

An ICE would be a positive addition to the legal order

It would encourage the consensual and progressive development of international environmental law.

It would clarify existing international environmental law by issuing advisory opinions and declarations of incompatibility.

It could also help to break the deadlock of existing UN climate change negotiations. An ICE would provide a neutral, transparent and principled dispute resolution forum as an alternative to a stagnant and entrenched political process

It could help to solve the pervasive environmental problem "The Tragedy of the Commons" where a lack of trust leads rational actors to act only for short-term self-interest and often against common/shared long term self-interest.

This lack of trust and inevitable fear of free riders (those "riding" for free on the efforts of others) is preventing the international order from working collectively to combat effectively Climate Change and transboundary environmental degradation.



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The disarray of the Climate Change talks in Copenhagen in December 2009 was a perfect illustration of the gridlock that exists if there is no institution of adequate authority in which parties (in that case nation States) can place their trust.

An ICE will help to build trust. It will resolve environmental disputes and pronounce on issues of environmental significance impartially and with the benefit of independently-verified science.

An ICE would provide a proper forum for the consideration of science and law

Complex questions of international environmental law, including causation, are inevitably based on environmental science. An ICE would seek to address these questions and adjudicate expertly on the science as well as the law.

An ICE would use any or all of the following:

- * Judges with experience in both Science and the Law
- * Advisors available (in Chambers) for the Judicial Panel
- * Independent experts who are available for questions and open to cross examination by the parties to the case at bar

The need for a forum providing in depth consideration of independent science has been reaffirmed recently with the ICJ's judgment in *Argentina v Uruguay - Pulp Mills*, in which the dissenting judgment regretted the ICJ missing "*what can aptly be called a golden opportunity to demonstrate to the international community its ability, and preparedness, to approach scientifically complex disputes in a state-of-the-art manner*" (Awn Shawkat Al-Khasawheh and Bruno Simma, 20 April 2010). The ICJ is a valuable institution but it is not capable of providing the adaptability, consideration of science and access to justice for non-State actors required in environmental disputes.

Access to Justice

An ICE would improve access to international justice for State and non-State actors alike, with a constitution designed to reflect the need to protect both present and future generations. It would reflect the fact that "serious environmental, social and economic challenges faced by societies worldwide cannot be addressed by public authorities alone without the involvement and support of a wide range of stakeholders, including individual citizens and civil society organizations." ("Vision and Mission" of the Aarhus Convention Strategic Plan)



It would be fully committed to implementing Principle 10 of the Rio Declaration and the Aarhus Convention, requiring access to justice for all concerned citizens, subject to a filter mechanism in the form of a threshold of the issue being sufficiently serious.

"Although regional in scope, the significance of the Aarhus Convention is global. It is by far the most impressive elaboration of principle 10 of the Rio Declaration, which stresses the need for citizen's participation in environmental issues and for access to information on the environment held by public authorities." (Kofi A. Annan, former Secretary-General of the United Nations)

Thus, there would be access to justice for, as well as jurisdiction over, non-State Actors. This would be a unique and popular feature of an ICE.

The role of the non-State actor is fundamental in an international economy that no longer recognises national boundaries. ICE would uniquely recognise this.

Assist existing treaties

ICE would:

- * Serve as the chamber for all Multilateral Environmental Agreements which reference Art 33(1) of the UN Charter, facilitating communication and problem solving.
- * Serve as the specialist tribunal for all questions of International Environmental Law.
- * Provide support to a proposed World Environment Organization. ICE would be a natural partner to such an organization to provide dispute resolution services as seen with the WTO and to assist in harmonising international responses to environmental issues.

