



ICE Coalition
Creating the International
Court for the Environment

The Case for an International Court for the Environment

Lack of an appropriate institution

“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 the necessary international consensus and trust.

The present corpus of international environmental obligations – in conventions and multilateral environmental agreements (MEAs) – is fractured and often overlapping. There is little or no opportunity for the development of consistent decision making or interpretation of those obligations. Uncertainty results, to the detriment of all interested parties – States, businesses, communities, NGOs and individuals.

There are proposals for a “World Environment Organisation” (a “WEO” - equivalent in scope to the WTO). Such a body would need a court or tribunal to resolve disputes and issue clarifications of obligations – along the lines of the WTO’s Dispute Settlement process.

Existing dispute resolution mechanisms in the international environmental field restrict access to justice, in most cases to States (as with the ICJ) or where at least one party is a State (as with the Permanent Court of Arbitration) or very limited categories of non-State actors. This leaves significant constituencies without access to those services – an anomalous position in an interconnected world where States are often not the key actors in cross-border interactions.

There is no suitable forum presently able to apply scientific and legal expertise to international environmental disputes or problems. The much respected ICJ has been criticised in this regard (missing “a golden opportunity”) by its own judges in a dissenting opinion in *Argentina v Uruguay – Pulp Mills* (20 April 2010).



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An International Court for the Environment (ICE)

We want to create an ICE that would help to solve these problems. It would:

- serve as the default forum for resolution of disputes concerning international environmental law; pronounce on issues of environmental significance impartially and with the benefit of independently-verified science; and clarify existing international environmental law by issuing advisory opinions and declarations of incompatibility.
- encourage the consensual and progressive development of international environmental law.
- provide a neutral, transparent and principled dispute resolution forum which could help to build trust and to work against the pervasive environmental problem “the tragedy of the commons”: for example, in the ongoing UN climate change negotiations and in fishing.
- seek to adjudicate expertly on the science as well as the law, using: judges with experience in both science and law; advisors on a judicial panel; and/or independent experts available for questions/cross-examination.
- initially be established as a voluntary dispute resolution forum, open to any body wishing to benefit from the expertise and impartial adjudication offered, and proving its worth by example.
- serve as the chamber for all MEAs which reference Art 33(1) of the UN Charter, facilitating communication, problem solving and the interchange of ideas and expertise and avoiding the compartmentalisation of the present system.
- provide support to a WEO. ICE would be a natural partner to such an organization to provide dispute resolution services as seen in the WTO and to assist in harmonising international responses to environmental issues.
- offer access to justice to State and non-State actors alike, meeting a need in the global economy where national borders are increasingly irrelevant. It would have a constitution designed to reflect the need for the protection of both present and future generations and would be fully committed to implementing Principle 10 of the Rio Declaration and the Aarhus Convention, requiring access to justice for all concerned citizens.
- apply a *de minimis* or other threshold or sufficient seriousness test to prevent vexatious or meritless claims.
- apply all those relevant legal rules and principles, whether international or municipal, which it deems appropriate and proper having regard to the character of the dispute before it.



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- likely be located away from the “usual” seats of international courts (The Hague, Geneva, New York etc) to reflect:
 - o the problems with which it will deal (often in developing countries)
 - o the problematic link between economic growth and environmental degradation (principally a developing country issue)
 - o the fact that many of the users of the court will not be in the rich West.

ICE Coalition at present

The ICE Coalition is calling for the establishment of an ICE. Its work to date includes:

- Incorporated as a not for profit company limited by guarantee in UK.
- Obtained tax-exempt status in California under IRC s.501(c)(3).
- Engagement with UK Government, in particular: DECC, DEFRA, FCO.
- Becoming a member organisation of the United Nations Environment Programme (UNEP) Stakeholder Forum, which leads on global stakeholder engagement and outreach in the run-up to the UN Earth Summit in Rio de Janeiro, 2012.
- Engagement with the UN Secretariat in New York.
- Engagement and involvement with UNEP itself and in particular its International Environmental Governance workstream (including, most recently, at the 26th Session of the Governing Council, Nairobi, February 2011).
- Involvement with the UNFCCC process, including presenting at the COP-MOP in Copenhagen 2009.
- Established links with Governments of Bangladesh, Brazil, India, Kenya, UK, Finland, Mauritius and with the EU
- Obtained support of international law firms: Clifford Chance, DLA Piper

Summary Recommendations

- Explicit inclusion of an ICE in treaties emerging from UNFCCC and UNEP processes.
- Recognition of the need for an ICE by national governments, business, NGOs, media.
- High-level support in government, science, diplomacy, UN, legal profession and judiciary. Simultaneous building of popular support, principally online.
- Offers of support from any person, organisation or country willing to host an ICE in its initial form.