



ICE Coalition
International Court
for the Environment

International Court for the Environment

- The problem
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- ICE Coalition
 - The story so far
 - Next steps



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The Problem

- *“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 ICJ in his foreword to the first edition of “Principles of International Environmental Law” by Philippe Sands QC, 1995)



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The Problem

Difficulty of resolving disputes arising out of:

- Environmental pollution with international implications
- Multi-national corporation activity
 - Bhopal, India, 1983
- National activity with international effects
 - 2006 case against five biggest US power companies
- Climate change
 - Intergovernmental Panel on Climate Change
 - Sir Nicholas Stern



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Particular problems with Climate Change

How to resolve disputes under the UNFCCC agreements?

- UNFCCC – Article 14
 - ICJ
 - Arbitration
- Kyoto Protocol – Article 19 (adopts UNFCCC Article 14 *mutatis mutandis*)
- Kyoto Compliance Committee – Enforcement Branch
 - In general, no appeal (except in case of emissions target decision and only if a Party believes it has been denied due process)



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Possible approaches to the Problem

- ICJ
- ICC
- PCA
- ICE



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Possible approaches to the Problem - ICJ

- International Court of Justice, established 1945.
- Jurisdiction depends on whether two or more States have consented to its jurisdiction.
- May accept cases that are environmentally related, but only States have standing.
- ICJ established in 1993 a Chamber specifically to deal with environmental matters. However, no state has ever submitted a dispute to that environmental Chamber.



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Possible approaches to the Problem – ICC

- International Criminal Court – focused on criminal activities
- May include environment-related acts, but unlikely to be appropriate venue, especially where corporate activity concerned
- Controversial



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Possible approaches to the Problem – PCA

- Permanent Court of Arbitration, established at The Hague by inter-governmental agreement in 1899
- Has jurisdiction over disputes when at least one party is a State (or an organisation of states) and when both parties to the dispute expressly agree to submit their dispute for resolution.
- No compulsory jurisdiction and decisions are not made available for public inspection.



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- Need for ICE
- Enhancement of body of law regarding international environmental issues
- Consistency in judicial resolution of international environmental disputes – global standards
- Declaratory adjudication
- Increased focus on preventative measures
- Encourage development of risk management programmes and improvement of business practices
- Could provide Climate Change agreement with appropriate dispute resolution tribunal



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ICE – the features

- Empanelled by senior international environmental jurists
- Standing for States, NGOs, corporations and individuals
- Transparent proceedings
- Ideally, compulsory jurisdiction



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Possible areas of work for ICE

- Emissions target measurements – consuming v manufacturing States
- Compliance – involving NGOs and other interested parties in the process (see World Bank procedure)
- Compliance – State-on-State supervision
- Corporate activity clarification
- Possibly... sanctions



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ICE – the story so far

- Earlier work
- November 2008 – British Library
- January 2009 – Policy Group and Campaigns Group set up
- April 2009 – Houses of Parliament
- June 2009 – formally established ICE Coalition



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ICE – the Next Steps

- October 2009
 - Fundraising
 - Political pressure
 - UK
 - India
 - UN
 - USA
- November 2009 – seminar
- Copenhagen



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Get involved!

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