

HISTORY OF ENVIRONMENTAL COURTS AND UNEP'S ROLE

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Since the late 1960s, widespread public awareness of environmental issues has resulted in a growing number of movements that aim to confront environmental degradation. However, most environmental problems and challenges are transboundary, regional, or global in scope. Successful solutions therefore require the participation of all members of society and the formation of global partnerships. The judiciary plays a vital role in implementing and enforcing these solutions and has begun to recognize that the boundaries of environmental law are expanding rapidly and that the protection of the environment is an urgent priority. Judges are also becoming increasingly aware of their roles and responsibilities to uphold the rule of law and to promote environmental governance through judgments and declarations.

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The International Union for the Conservation of Nature (IUCN), founded in 1948, established its Environmental Law Programme in 1965 to promote sustainability through legal concepts and instruments.¹ The Environmental Law Programme operates through several subdivisions, such as the Commission on Environmental Law (CEL).² The CEL is a network of environmental law and policy experts, from all regions of the world, who volunteer their knowledge and services to IUCN activities.³

In 1992, many heads of state met in Rio de Janeiro, Brazil for the first international United Nations Earth Summit.⁴ The summit was convened to address urgent problems of environmental protection and socio-economic development. By the end of the summit, 178 governments had adopted the Rio Declaration.⁵ Importantly, Principle 10 of the Rio Declaration recognizes that environmental issues are best addressed with “the participation of all citizens,” “appropriate access to information,” “the opportunity to participate in decision-making processes,” and “effective access to judicial and administrative proceedings, including redress and remedy.”⁶

In 1996, the United Nations Environment Programme (UNEP) recognized the central role the judiciary plays in promoting environmental governance by developing and implementing a program to engage the judiciaries of all countries in the pursuit of the rule of law in the area of environmental and sustainable development.⁷ Furthermore, over the past several years, UNEP has partnered with several other groups, such as the IUCN, to develop environmental resources for the judiciary.

From 1996 to 2002, UNEP collaborated with the IUCN to convene six regional symposia on the judiciary’s role in promoting

1. International Union for the Conservation of Nature, *About the Environmental Law Programme*, http://www.iucn.org/about/work/programmes/environmental_law/elp_about/ (last visited Aug. 16, 2010).

2. *Id.*

3. *Id.*

4. UN.org, U.N. Conference on Environment and Development (1992), <http://www.un.org/geninfo/bp/enviro.html> (last visited Nov. 6, 2010).

5. See LAW AND THE ENVIRONMENT: A MULTIDISCIPLINARY READER 366 (Robert V. Percival & Dorothy C. Alevizatos eds., 1997); Rio Declaration on Environment and Development, U.N. Doc. A/CONF.151/5/Rev.1 (June 14, 1992) [hereinafter Rio Declaration].

6. Rio Declaration, princ. 10.

7. U.N. ENV’T PROGRAMME, UNEP GLOBAL JUDGES PROGRAMME vi (2004), available at www.unep.org/law/PDF/UNEP_Global_Judges_Prog_New.pdf.

sustainable development.⁸ Chief justices and judges from countries in different regions met in Mombasa, Colombo, Manila, Mexico City, St. Lucia, and Brisbane.⁹ Two additional judges' symposia were held in Kuwait and London, also in collaboration with the IUCN.¹⁰ Participants at these regional symposia made presentations discussing their home countries' national environmental legal systems in an attempt to exchange viewpoints, knowledge, and experience in order to promote further development and implementation of environmental law in each region. Participants reviewed the role of the courts in promoting the rule of law in the area of sustainable development, discussed recent trends in the development of environmental jurisprudence, and examined contemporary developments and important judgments, in the fields of both national and international environmental law.

In August 2002, UNEP convened the Global Judges Symposium on Sustainable Development and the Role of Law, along with the World Summit on Sustainable Development in Johannesburg, South Africa.¹¹ The symposium drew over 120 judges from more than sixty developed and developing countries.¹² The judges found that, "the deficiency in the knowledge, relevant skills and information in regard to environmental law is one of the principal causes that contribute to the lack of effective implementation, development and enforcement of environmental law" at the national and local levels.¹³ To address such concerns, attendees pledged to improve environmental laws and to challenge environmentally damaging developments in order to fulfill their duties to defend human rights, public health, and the environment. To improve online access to judicial resources, participants also helped launch the UNEP-IUCN Judicial Portal.¹⁴ The Chief Justice of South Africa, Arthur Chaskalson, announced, "Laws are ineffective unless they are implemented, and much environmental law exists but has not been enforced."¹⁵ The participant's pledge to

8. *Id.* at 18.

9. *Id.* at 11.

10. *Id.*

11. *Id.* at 13.

12. *Id.*

13. *Id.* at 14..

14. *Id.* at 11

15. Paul Brown, *Judges Pledge to Champion Environment*, THE GUARDIAN, Aug. 28, 2002, available at <http://www.guardian.co.uk/environment/2002/aug/28/worldsummit2002.internationalnews1>.

commit to the principles of the rule of law was embodied in the Johannesburg Principles on the Role of Law and Sustainable Development (the Johannesburg Principles), signed and adopted by acclamation by the judges, and presented to the then Secretary-General of the United Nations, Mr. Kofi Annan, and presented at the World Summit on Sustainable Development.¹⁶

The Johannesburg Principles are founded on the premise that an independent judiciary should act as the “guardian of the Rule of Law. . .to implement and enforce applicable international and national laws. . . ensuring that the inherent rights and interests of succeeding generations are not compromised.”¹⁷ These principles call on the international community to develop strategies to remedy the deficiency of relevant skills and information, which prevent the effective implementation of environmental law.¹⁸ They also emphasize the need to provide legal stakeholders with the requisite skills and information to cope with the persistent evolution of international agreements, constitutions and statutes concerned with environmental protection.¹⁹ To help achieve these goals, the principles designate UNEP’s Executive Director to lead efforts to improve the implementation of environmental law.²⁰ These principles have served as a rationale and a template for many subsequent international judicial capacity-building efforts.

In January 2003, twenty-five judges from around the world gathered for a follow-up meeting, in Nairobi, Kenya, to focus on capacity-building in the area of environmental law.²¹ These judges helped UNEP develop and implement the Global Judges Programme in an attempt to achieve more effective application and enforcement of domestic environmental law.²² Since then, UNEP’s Global Judges Programme has been working to develop a series of environmental law training materials which encourage national efforts to strengthen the role of the judiciary in securing environmental governance, adherence to the rule of law, and effective implementation of national

16. U.N. ENV’T PROGRAMME, *supra* note 7, at 14.

17. *Id.* at 13.

18. *See id.* at 14; The Johannesburg Declaration on Sustainable Development, U.N. Doc A/CONF.199/20 (Sept. 4, 2002).

19. U.N. ENV’T PROGRAMME, *supra* note 7, at 17.

20. *Id.*

21. *Id.* at 19.

22. *Id.*

environmental policies, laws, and regulations, including the national level implementation of multilateral environmental agreements.

In February 2003, the UNEP Governing Council unanimously adopted Decision 22/17 II (A), urging the Executive Director to help improve the capacity of those involved in the process of developing and enforcing national and local environmental law.²³ This decision created a UNEP alliance of chief justices from over 100 countries.²⁴ Members pledged to offer their full support for the UNEP Global Judges Programme, and declared their commitment to carrying out specific capacity-building efforts, such as creating an environmental handbook for judges, establishing a global training centre for judges, and creating judges forums on environmental law. The Environmental Law Branch of the UNEP Division of Policy Development and Law has since been working to respond to the specific needs of each country and to develop capacity-building plans for judges worldwide.

From 2003 to 2005, UNEP held nine regional planning meetings to improve judicial capacity to address environmental degradation. The meetings took place in Thailand, Argentina, Nairobi, Johannesburg, Auckland, Cairo, Jamaica, Rome and Liviv.²⁵ Each of these regional planning meetings resulted in the development of regionally-specific plans to improve judicial capacity to interpret and enforce environmental laws.²⁶ These regional meetings also helped to establish regional judicial networks on environmental law and helped to mobilize collaboration between members of the region and UNEP.²⁷

In April of 2004, UNEP helped organize a meeting between European judges in Luxemburg to establish a European Union Judges Forum for the Environment.²⁸ This resulting organization pledged to exchange experiences on environmental case law, and to increase the capacity of the judiciary to implement and enforce international, European and national environmental law.²⁹ To further these objectives, the organization plans to set up a database to provide access to important environmental legal information and to hold

23. *Id.* at 21.

24. *Id.* at 15.

25. *Id.* at 6-7.

26. *Id.* at 6.

27. *Id.*

28. *Id.* at 60.

29. *Id.*

annual administrative board meetings.³⁰

In May of 2003, UNEP also helped to organize a meeting between Arab judges, which resulted in the establishment of the Arab Judges Union for the Protection of the Environment.³¹ This union aims to deepen the notions of environmental protection among Arab nations, increase the role of judges in bolstering environmental laws, and provide a forum for exchanging knowledge and experiences with environmental law between member states and other similar judicial organizations.³² To achieve these objectives, the union proposed to establish an environmental database and legal library, to suggest draft environmental laws to the member states, and to promote the publication of legal materials regarding environmental protection.³³

Today, more than eighty governments have enacted laws to increase access to environmental information.³⁴ Hundreds of specialized environmental courts and tribunals have been established in over forty countries.³⁵ The Supreme Court of India has taken several measures to hear citizen-enacted public interest environmental cases regarding forest conservation, the illegal felling of trees and waste management issues.³⁶ In Australia, the Land and Environment Court of New South Wales has become a leader in providing effective justice in environmental matters.³⁷ In Brazil, both federal and state environmental trial courts and one appeals court have been put in place.³⁸ The Supreme Court of the Philippines has designated 117 courts for improved environmental adjudication, and has announced plans to partner with the Philippine Judicial Academy (PHILJA) to conduct specialized training for personnel in those courts.³⁹

In the United States, Vermont is the first and only state to

30. *Id.* at 60 .

31. *Id.* at 24.

32. *Id.* at 66.

33. *Id.* at 68-69.

34. GEORGE PRING & CATHERINE PRING, GREENING JUSTICE: CREATING AND IMPROVING ENVIRONMENTAL COURTS AND TRIBUNALS (THE ACCESS INITIATIVE 2009), available at <http://www.accessinitiative.org/resource/greening-justice> and <http://www.law.du.edu/ect-study> (available free of charge electronically at both websites).

35. *Id.*

36. *Id.* at 58.

37. *See, e.g., id.* at 6, 28, 60, 77, 112.

38. *Id.* at 106.

39. *Id.* at 31; see Asian Environmental Compliance and Enforcement Network: Strengthening Asian Judiciaries, <http://www.aecen.org/strengthening-asian-judiciaries> (last visited Nov. 7, 2010).

establish an environmental trial court with statewide jurisdiction.⁴⁰ The court hears appeals from state land use permit decisions, from decisions of the Agency of Natural Resources, from municipal land use zoning, and planning decisions.⁴¹ The court also hears municipal land use enforcement cases, and enforcement actions brought by the Agency of Natural Resources as well as the Natural Resources Board. Almost all cases are heard *de novo*, with an evidentiary trial, and are scheduled for a courtroom in the county in which the case arises.⁴²

In Washington, the Washington State Environmental Hearings Office was established to provide expeditious and efficient resolution of environmental appeals through hearings and alternative dispute resolution processes.⁴³ This court aims to foster a consistent statewide interpretation of Washington's environmental laws in agency decision-making and appeals. It consists of a pollution control hearings board, shorelines hearings board, forest practice appeals board, environmental and land use hearings board, and hydraulics appeals board.⁴⁴ Further, thirteen other states have launched environmental court initiatives at the local government level.⁴⁵ Despite these efforts, many citizens still lack adequate access to environmental justice due to ineffective implementation and development.

In 2009, Pace University School of Law, along with the IUCN and other partners, began the groundwork for the creation of the International Judicial Institute for Environmental Adjudication (IJIEA) to support the judiciary in addressing contemporary environmental issues. IJIEA will be an independent, non-profit research and advocacy organization. Its mission is to advocate international collaboration to further strengthen the environmental Rule of Law and to address many of the concerns raised by the Johannesburg principles. IJIEA will focus on topics such as comparative judicial practices on climate change and other emerging issues; procedural issues and penalties in criminal environmental proceedings; the interface of the Rule of Law and environmental cases, incorporating

40. PRING & PRING, *supra* note 34, at 31.

41. Vermont Superior Court, Environmental Division, <http://www.vermontjudiciary.org/gtc/environmental/default.aspx> (last visited Aug. 16, 2010).

42. *Id.*

43. The State of Washington, Environmental Hearings Office, About EHO, <http://www.eho.wa.gov/AboutEHO.aspx> (last visited Aug. 16 2010).

44. PRING & PRING, *supra* note 34, at 144.

45. *Id.* at 109.

findings from other recent conferences; the ability of courts to encourage and develop scientific understanding of environmental evidence issues; judicial practices and the judge's role in environmental licensing and permitting; procedural innovations in civil law proceedings; development of environmental enforcement techniques which can be adapted and incorporated into any legal systems; and citizen involvement in promoting access to fairness and environmental justice. IJIEA is committed to fostering environmental protection, sustainable development, and access to environmental justice both domestically and abroad through scholarship, research, training, publications, and worldwide discourse in environmental law and policy.