The Role of International Courts and Tribunals in Global Environmental Governance

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Tremendous progress has taken place in international environmental law and politics over the last few decades. Important achievements have also been made in many areas in terms of the increasing problem-solving effectiveness of international environmental institutions. However, some mismatch exists between the significant efforts invested and the results produced on the ground.

The main components of the international environmental governance system are multilateral environmental agreements (MEA), but a number of softer political instruments have also been established. This article focuses on the role of international courts and tribunals (ICT) in this governance system. More specifically, have they so far increased the effectiveness of international environmental governance? Currently there is no issue-specific International Environmental Court (IEC). What are the chances that one will be established? Which actors want it? Who does not? What are the respective groups' arguments? If one is established, would it enhance the effectiveness of this governance system? The article discusses these questions in relation to approaches used and insights gained from studies of the international environmental regime establishment and their effectiveness.

With this caveat, the outline of the article is as follows. First it briefly presents the main schools of thought regarding international regime establishment before discussing the concept of effectiveness. It then briefly overviews the development of

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international environmental politics. That is, what are the existing dispute-settlement mechanisms? How are they used? What is the status in terms of compliance? How effective are MEAs? The answers to these questions indicate whether or not there is a need for an IEC. The article then turns to the role that some of the ICTs have played in international environmental governance, examining it through the lenses of international relations / political science. The article principally emphasizes the International Court of Justice (ICJ) and the dispute-settlement mechanisms under the Law of the Sea Convention, which is said to be particularly important for environmental issues.[1] The study does not address the use of dispute-settlement procedures in the World Trade Organization (WTO) with consequences for the environment since this area has been extensively discussed by political scientists.

Before concluding, the article turns to the prospect of a new IEC, arguments for or against such an institution, the political feasibility of establishing it, and its possible role in affecting international environmental governance. The author relies primarily on secondary sources but uses primary sources from some of the relevant cases as well.

From Regime Creation to Regime Effectiveness

In the 1970s and 1980s, international relations scholars began studying the creation of international regimes. Why did they form in some issue areas but not in others? What did it take for regimes to be established? Different schools had different answers. The following discussion offers a crude and simplified overview.

The realist school of thought emphasized the significance of a so-called hegemon or a very dominant player. For a regime to form, it had to be in the interest of a hegemon willing to bear the brunt of the costs of establishing the relevant institution. This approach closely mirrors political realities in the early postwar period when the United States generally displayed the role of hegemon in key issue areas. Creation of the North Atlantic Treaty Organization as well as the General Agreement on Tariffs and Trade fits well into this perspective. It follows that the relevant institutions had little or no independent influence. They simply mirrored the interest of the most powerful actors.[2] The gist of the realist argument is still valid in the sense that power plays a dominant role in international politics—a fact demonstrated daily in various issue areas. However, the hegemon approach is less relevant in the more recent multipolar world, and it has been documented that the hegemonic approach has limited relevance in explaining the establishment of most environmental regimes.[3]

Members of the liberal school of thought also stress the significance of states, their power, and self-interests, but they also underline the role of nonstate actors in regime creation. They maintain that, through various mechanisms, states may see that the establishment of regimes and institutions is in their best interest.[4] This school also emphasizes the significance of various forms of leadership in the process of regime

creation, arguing that these institutions are more than the sum of the interests of the major parties and may therefore have an independent effect.

Finally, the "softest" approach is the social constructivist one, which promotes the role of ideas and knowledge in the creation of international regimes. In contrast to the two other schools of thought, advocates of this approach do not consider national interest fixed since it may be shaped by the institution in question. Social constructivism is also far less state-centric than the two other approaches, underlining the significance of so-called epistemic communities in regime creation.[5]

Effectiveness studies commenced in the 1990s, and the main empirical focus has been on international environmental regimes.[6] The emphasis on the effectiveness of these institutions mirrors real-world development. When some of these organizations reached "adulthood" in the 1990s, it made sense to study whether they made a positive difference in relation to the problem they were set up to solve. Unless we know something about their effect, it does not make much sense to establish them.

Initially some analysts used goal attainment as an indicator of effectiveness. Doing so makes sense, given a consensus regarding the goal among the members of the institution and the clarity and specificity of the goal. However, because these two conditions are often not met, goal attainment is no longer used by most analysts. Consider the following examples, which illustrate the problems of applying a goal as an indicator of effectiveness. The goal of the World Health Organization is quite simple—health for all—but no easy task to measure, to put it mildly. Regarding consensus—or the lack of such—about the goal, suffice it to mention the International Whaling Commission, whose goals both pro-whaling and anti-whaling forces interpret in fundamentally different ways.

Over time, a consensus has emerged that (the dependent variable) effectiveness can be coined in terms of output, outcome, and impact.[7] Outputs deal with rules, regulations, and programs adopted by the institution in question—for example, the Kyoto Protocol within the climate regime. The more stringent and sophisticated the rules and regulations, normally the more effective the institution. Still, because rules do not always inspire compliance, output, essentially, is only potential effectiveness. We also need to know what happens on the ground. The outcome indicator, therefore, focuses on the institution's effect on the behavior of key target groups. Careful process tracing is needed to establish causality between the regime in question and behavior on the ground. For example, the massive reductions of greenhouse gas emissions in the "economies in transition" countries in the 1990s were not caused by the United Nations (UN) climate regime but by economic recession. Finally, impact deals with the direct effect of the institution on the problem at hand. To what extent has the problem been solved as a result of the regime? This indicator is the most important because it shows us the problem-solving ability of the institution in question. How-

ever, due to the high number of intervening variables and long, complex chains of causality, this indicator is difficult to use in practice.

Turning then to the question of how these concepts can be applied in relation to the study of ICTs, this does not represent much of a problem regarding the establishment of international courts. It is more problematic in studying their effectiveness. Regarding delineation of the dependent variable in terms of output, outcome, and impact, output would be the decision made by the relevant ICTs, outcome would be the effect the decision had on the behavior of the parties in question, and impact would be the wider consequences for the problem at hand. To translate directly, is the decision potentially "environmentally friendly"? Do the parties change behavior in a more positive environmental direction as a result of the court's decision? Will the relevant environmental problem be affected in a beneficial manner? The longer the causal chain, the more difficult it is to measure precisely. Here we do not go beyond the output indicator.

However, the historical and arguably still the most important task of international judicial procedures is to secure the peaceful settlement of disputes between states.[8] Thus, it is *not* the goal of ICTs to improve the environment but to resolve disputes through interpreting existing relevant laws, making dispute resolution the most relevant indicator of effectiveness. Although the use of goals as an indicator of environmental regime effectiveness is often not very meaningful, it is highly relevant for ICTs. However, we will also discuss the extent to which their decisions point in a productive direction for the environment.

International Environmental Governance: Structure and Effectiveness

This portion of the article, quite elementary for experts on international environmental governance, is written primarily for readers who are not. As noted, the backbone of the international environmental governance structure is the MEAs. They began to be established in the 1960s, and their growth has been astonishing. The most substantial growth occurred in the 1990s but has now subsided somewhat, and there are now hundreds of MEAs, mostly regional and bilateral. A convention or a treaty is a starting point, a framework in which more detailed rules are often included through one or more protocols. To become legally binding, a treaty needs to be ratified by a stipulated minimum number of countries. MEAs usually have a permanent secretariat to organize and facilitate the process of negotiations. State parties generally convene at annual or biannual conferences of the parties, the supreme decision-making body. Global environmental conventions usually have subsidiary specialized bodies dealing with such issues as scientific advice, implementation, and compliance. Many MEAs also have close ties with the United Nations Environment Program,

assisting and advising the parties in various ways. Important in terms of implementation of commitments, primarily for the developing countries within key global MEAs, is the Global Environmental Facility. Some MEAs also have a separate fund to facilitate implementation in developing countries. A number of soft-law instruments and partnerships are also established at various governance levels.

In short, multilateral environmental politics are built on a rather sophisticated and elaborate institutional framework that has evolved over time. The overall goal of this "environmental regime complex" is—separately and jointly—to improve the environment on Earth, from the local to the global level. Some people find this regime complex too fragmented and argue that it reduces its effectiveness, claiming we therefore need a World Environment Organization (WEO).[9] Since many proponents of an IEC argue that such an institution should be linked to a WEO, we will return to this point below. Nevertheless, considering this advanced institutional setup, we find that it is not self-evident that one or more specialized courts are needed. However, a key argument for establishing an IEC is that the existing system is ineffective.[10] Legal scholars base this assessment on a very narrow definition of effectiveness—dispute-settlements procedures. In line with our perspective, we will cast the net wider.

The picture is mixed regarding the problem-solving effectiveness of international environmental regimes. In the 1970s, treaty crafters confined themselves to agree that a problem existed and established an MEA to deal with it, with no further specifications. In the 1980s, targets and timetables to measure progress or the lack of such were added, and in the 1990s differential obligations and concerns about cost-effectiveness were added; subsequently, market mechanisms have also been applied.[11] Considering the growth of population and economic output over the last three decades and using a counterfactual argument, one has no doubt that the overall state of the environment would have been much worse in the absence of these MEAs.

Still, none of the major global environmental challenges have been fully solved by these regimes, and true success stories are rare. According to the 2012 edition of the United Nations Environment Programme's Global Environmental Outlook (GEO 5), *Environment for the Future We Want*, among the 90 environmental and sustainability goals of the UN, only a handful can be described as success stories, but considerable achievements have been made in quite a few of them.[12] Research confirms that there are notable variations in the achievements of the relevant MEAs.

Overall, the system for the compliance of MEAs is weak, the rules are often vague, and sanctions are hardly ever used. The major exceptions to this rule are the ozone regime, the Kyoto Protocol, and the Aarhus Convention.[13] In general, though, the level of compliance says little about the problem-solving effectiveness of the MEAs because the rules are usually too weak to address the matter. When it comes to dispute settlement in MEAs, one finds hardly any research on this issue among

international relations scholars. The most obvious explanation is that they have little significance since in practice, dispute settlement under MEAs is not utilized.[14]

The Role of Courts in International Environmental Governance

Over the last few decades, ICTs in international politics have experienced strong growth, and specialized courts have been established in a number of issue areas. As noted, no specialized environmental court has been founded, but other courts and tribunals have tried cases in which the environment plays a role. Below we concentrate mostly on main patterns and trends without going into specific cases because doing so lies beyond our area of expertise. Compared to MEAs, these courts and tribunals play a marginal role—illustrated by the fact that two of the court processes still considered most important in this issue area are the *Trail Smelter Dispute* and the *Fur Seal Arbitration*. These date back to 1941 and 1892, respectively—long before the field came to be dominated by the MEAs. To our knowledge, no similar "milestone" court cases have taken place after the MEAs began to arise. We pay greatest attention to the ICJ as the most important general-purpose court and the law-of-the-sea tribunals since it is considered the most important court for environmental issues.[15] First we present a brief overview of some of the other relevant ICTs.

There is one exception to the generally marginal role played by ICTs in international environmental politics—the Court of Justice of the European Community. Some analysts use this institution as an illustration of the increasing importance of ICTs.[16] However, this article maintains that such a stance is a reflection of the stronger role of the "rule of law" in Europe / the European Union and not representative of the state of the art of international politics more generally. The world may not be quite as anarchic as the realists claim, but it is certainly very different for the politically and institutionally tightly knit European Community.

What about environmental issues within human rights courts and the International Criminal Court (ICC)? As to the relevance of human rights courts, most international regimes and instruments avoid the "right-base" language—probably very consciously to avoid being challenged by such courts. The latter have not had much relevance either for environmental issues or the development of international law. The same goes for the ICC. Individuals and corporations causing environmental damage have long been subject to criminal sanctions under domestic legal systems, but no similar development has taken place internationally. The Permanent Court of Arbitration (PCA), created for the maintenance of general peace, has existed for more than 100 years. It has not had much significance for environmental issue areas in that only five such cases have been brought before it, mostly between smaller Western European countries. In view of the light environmental caseload, in 2001 new opera-

tional rules for the environment were established. Interestingly, these have not been used by either the PCA or any other arbitral tribunal.[17]

The International Court of Justice

In general the environment has been fairly high on the international political agenda over the last two decades. Has this growing awareness also resulted in greater interest in interstate environmental litigation? Are states willing to give authority to an international court like the ICJ to solve their disputes? We have found no clear definition of an "environmental case" in the literature. We have defined it as a case brought before the ICJ marked by the fact that one of the objectives of the proceedings is environmental protection and that the claim of one of the applicants is (at least in part) based on international environmental law.

The caseload of the ICJ dealing with environmental issues has increased slightly, but the number of cases is very small. Interestingly, the first case with some environmental connotations occurred in 1973, just as the environment had entered the international political agenda through the 1972 Stockholm Conference. In the 1990s, there were four cases and the same number after 2000.[18] Most of them are rather low-profile issue areas, primarily between Latin American countries, so the ICJ has not played a key role in high-level, politicized environmental issue areas. The only partial exception is the recent whaling case between Australia and New Zealand versus Japan.[19] However, the first case was also a highly political issue although not primarily associated with the environment—the nuclear test case among France, Australia, and New Zealand in 1973. Despite the absence of a ruling, France stopped these tests and removed the program underground. Whether it did so because of the publicity brought about by this case or the fact that the other nuclear states also changed practice in a similar direction we do not know.

According to analysts of these cases, most rulings did not favor the parties claiming to be hurt by transboundary pollution.[20] However, some examples indicate that the ICJ process may have contributed to the initiation of negotiations and solved previously deadlocked problems. Still, most cases have not contributed much to the development of international environmental law, with one exception—the case concerning *Pulp Mills on the River Uruguay*. Argentina claimed that Uruguay had breached its obligations under the 1975 bilateral statute of the River Uruguay when it authorized and constructed two pulp mills on the river. Argentina claimed that this action would affect the quality of the water and the areas influenced by the river. This dispute is said to have been the most important environmental case decided by the ICJ until now.[21] In this matter, the ICJ was thought progressive in considering several environmental arguments in depth, particularly the need for conducting environmental impact assessments. However an important critique of this case was that the ICJ

did not apply independent scientific expertise to this highly complex scientific issue, instead basing its decision only on information from the parties.[22]

Also interesting is the whaling case—the only time when a state brought a case before the ICJ for a global public interest since it did not claim that its own rights were breached; rather, it was about the interpretation of the International Convention for the Regulation of Whaling.[23] Whether the ICJ used external scientific expertise in this highly contested issue we do not know. However, if this matter indicates a new trend for parties to involve the ICJ in more general global affairs, it may become more important and relevant over time. The ICJ, though, seems reluctant to use environmental law, especially MEAs, in its decisions although parties in some of the cases have referred to them. One interpretation may be that international environmental law is often vague due to political compromises made, and they are therefore difficult to apply. Thus, the fact that environmental law is not applied may not be due to a cautious stance by the ICJ but to a weakness of international environmental law. Attempts have been made to make the ICJ more relevant for environmental issues, but, similar to the experiences of the PCA, this effort failed. In 1993 the ICJ established a seven-member permanent environmental chamber. In a press release, the court stated that it needed the chamber in light of recent developments in international law.[24] However, the chamber was *never* used, and it was abolished in 2006.[25] The vagueness of the relevant rules may have contributed to its demise. Another explanation may be that cases are rarely "purely" environmental and that other elements are also involved. Probably most importantly, parties may find other mechanisms, such as negotiations and diplomacy, more relevant to resolve their conflicts. This interpretation is supported by the fact that parties do not utilize the dispute-settlement mechanisms of the MEAs.

Finally, as noted, only a few small and medium-sized powers use the ICJ, illustrating that major powers are not willing to accept binding adjudication that threatens their national sovereignty.[26] The only partial exception is Japan.[27] This point is illustrated by the minority of states that have accepted the ICJ's compulsory jurisdiction. Neither the United States nor most emerging economies have done so.[28]

The United Nations Convention on the Law of the Sea

The key document here is the United Nations Convention on the Law of the Sea. The treaty was opened for signature in 1982 and came into force in 1994. There are four different dispute means under the convention: the International Tribunal for the Law of the Sea (ITLOS), the ICJ, an arbitral tribunal constituted in accordance with Annex VII to the convention (from now on referred to the Arbitral Tribunal), and a special arbitral tribunal constituted in accordance with Annex VIII to the convention. The ITLOS has a number of chambers for specific functions. Between 1996

and 2014, the ITLOS and/or the Arbitral Tribunal dealt with a total of 22 cases, but according to our understanding of an environmental issue, few cases were somewhat related to environmental issues.[29] Similar to cases before the ICJ, the ones here have mainly been low-profile issue areas between small states. Consequently, neither the ITLOS nor the Arbitral Tribunal has played a significant role in high-level, politicized environmental issue areas.

In only two of the six environmental cases did the ITLOS / Arbitral Tribunal reach a ruling.[30] In the other cases, it did not issue a judgment because the tribunal claimed it lacked jurisdiction to rule on the case, the parties resolved the dispute themselves, or one of the parties withdrew the case.[31] For example, in the *Swordfish* case, the ITLOS never ruled because the parties found agreement among themselves, but it may be that the ITLOS contributed to the process to reach an agreement. The European Union and Chile had been engaged in disagreements over the swordfish fisheries in the South Pacific for a decade and did not reach an agreement before bringing the case to the ITLOS and WTO.

The most important case brought to the ITLOS is said to be the one regarding the *Responsibilities and Obligations of States Sponsoring Persons and Entities with Respect to Activities in the Area.* In this case, the Council of the International Seabed Authority requested an advisory opinion from the Seabed Dispute Chamber on the legal responsibilities and obligations of states parties to the convention with respect to the sponsorship of activities in the area.[32] The advisory opinion has resulted in a clearer understanding of the responsibility of the sponsoring state with respect to the area. Cathrin Zengerling considers the advisory opinion the clearest and most important by the ITLOS in the application and development of international environmental law.[33] The case is important because it is about both environmental protection and fair and equitable resource exploitation. In other words, it is about the sustainable management of a global commons.

Only four bilateral disputes related to environmental issues have been brought to the ITLOS / Arbitral Tribunal, including small or medium-sized countries—the same trend that we saw in the ICJ cases.[34] Based on practice until 2014, the ICJ and the tribunals under the United Nations Convention on the Law of the Sea have not played an important role in international environmental politics.

A New International Environmental Court?

Primarily two groups—nongovernmental organizations and lawyers—have argued for the establishment of an IEC, but a few other actors have also supported the idea.[35] The idea emerged at the end of the 1980s during a time when the environment was very prominent on the international political agenda. In the spirit of the "environmental enthusiasm" at the time, an international (nongovernmental) conference in

the Hague in 1989 called for a "new institutional authority" within the UN system. This body would address the problem of global warming and should be equipped with decision-making and enforcement powers. The idea went nowhere, and no UN body has since supported it.[36]

A more sustained effort was initiated in Italy, and an IEC was first proposed in 1988 by a committee in Rome. In 1989 the National Academy of Lincei, Rome, organized an international Congress on a More Efficient International Law on the Environment and Setting Up an International Court for the Environment within the United Nations. The academy set up the International Court of the Environment Foundation (ICEF), recognized in Rome in 1992 as a nonprofit foundation. It was accredited with the UN Economic and Social Council as well as some other international organizations, but it has had no practical significance and has not been accepted by any states. Since 1992 the ICEF has organized a number of conferences to further elaborate the idea of an IEC. A number of lawyers from other countries were also involved in this process. Its representatives attended the 1992 UN Conference on Environment and Development and the 2002 Johannesburg Summit. The last ICEF International Conference took place in Rome in May 2010.[37]

In 2008 another initiative was established in the United Kingdom—the International Court for the Environment (ICE). It campaigned for an IEC in the buildup to the UN Framework Convention on Climate Change (Conference of the Parties 15) in Copenhagen in 2009.[38] The core elements of an IEC as advocated by the ICE Coalition are essentially the same as those for an IEC. Another initiative in this regard was the United Nations University (UNU) *Report on International Sustainable Development Governance*, prepared for the Johannesburg Summit. More recently the International Bar Association has also become engaged in the issue. Although no influential political actors have taken this position, an interesting exception is the WTO's earlier general secretary, who has expressed support for the idea of an IEC modeled after the WTO's dispute-settlement mechanism.[39] So far no official statement of political support for an IEC has been issued by any state, but Børge Brende, the previous Norwegian minister of environment, supported the idea.[40] Linking back to the various schools of thought regarding regime creation, one finds that based on this experience, the social constructivist approach receives little support.

Let us turn to some of the arguments in favor of establishing an IEC. Perhaps the most thorough and interesting ideas have been presented in the UNU report, which asserts that states might be more willing to grant compulsory jurisdiction to a specialized rather than a universal court. Furthermore, such an IEC might be more acceptable as a judicial branch of a proposed new WEO, similar to the WTO institutional setup. The political body of the new WEO could exercise control over the IEC, just as the WTO dispute-settlement body does for the WTO panels and appellate body. Alternatively, it was suggested that a new IEC could be a part of any other

structure coordinating the existing MEAs.[41] The UNU report argues in favor of establishing some form of filter to prevent frivolous, publicity related, or politically motivated cases.[42] The authors propose a judicial branch of international environmental law that would complement existing monitoring systems, suggesting two ways of doing so with judicial review: either extending current compliance procedures through a second stage of third-party adjunction or establishing a distinct process of judicial settlement that comes into play when compliance procedures fail to resolve a case.[43]

Some of these ideas are interesting and rather "sober" as they want to coordinate a new institution closely with the existing system. However, in the concluding section we return to some basic flaws in the argument.

A new, interesting actor arguing in favor of an IEC is the International Bar Association, which includes 200 bar associations worldwide and has more than 55,000 members. For the first time, a legal organization of this size has engaged in the issue. In a report, it highlights that climate change disproportionately affects those who have contributed the least to the problem and do not have the resources to respond, adding that current laws are not sufficient to redress this imbalance. The International Bar Association applies a human rights perspective. The report recommends that until that court is established, countries should recognize the jurisdiction of the ICJ and the PCA in the Hague.[44]

What other general arguments have been presented in favor of an IEC? As mentioned above, one main point is that it is needed because current international regimes are ineffective with weak dispute-settlement procedures. Advocates of an IEC also find evidence of this deficiency in decisions from the ICJ. To a large extent, this finding is confirmed in our studies of the ICJ and ITLOS. Consequently, they argue that a special court able to hear only environmental disputes would give the environment the special attention it needs.[45] There is also a procedural critique of the existing system highlighting the lack of understanding of environmental issues among traditional "generalist" international judges.[46]

Other arguments in favor of establishing an IEC are access to nonstate actors as well as private citizens, faster resolutions of problems and disputes, lower costs of litigating international environmental disputes, better enforcement of environmental treaties, better scientific procedures, provisions to avoid forum shopping, compulsory jurisdiction, and a clear and enforceable language. In short, advocates of a new court cite the necessity of one international entity that can promote uniformity among environmental laws, both foreign and domestic.[47] Some individuals also call for the full implementation of Principle 10 of the Rio Declaration and the importance of establishing an IEC outside the "usual suspect" cities like New York, Geneva, and the Hague.[48]

Concluding Discussion

Many good arguments urge the establishment of a new IEC, but no single state in the world has supported the idea. Therefore, it will not be established in the foreseeable future. That is, the "score" in terms of political feasibility is close to nil. Some of the more interesting suggestions involve linking an IEC to the existing institutional structure. The idea of associating an IEC with a WEO, however, illustrates how far-fetched the idea is under real-world circumstances. The notion of establishing a WEO was a particularly "hot" issue in the run-up to the 2002 Johannesburg Summit. The strongest supporters were some of the European countries, but the idea has never gotten sufficient traction. Major developing countries do not want a new institution specifically designed for the environment because they prefer to concentrate on the broader sustainability issues. The United States is also against this "top-down" idea, arguing instead for the need for bottom-up approaches and competition among environmental institutions.[49] The likelihood of establishing a WEO is therefore also close to zero. Considering that this organization would be a much less intrusive body than an IEC, the situation illustrates how far the international community is from establishing such an institution.

It also seems a bit out of place in relation to the present discourse to argue for an environmental court when the broader sustainability concept has overtaken the narrower concept of environment. As we have demonstrated, it is very difficult to single out issue areas that are exclusively environmental. That may be one reason why the Environmental Chamber of the ICJ as well as a similar body of the PCA was never applied—and why the existing courts are very rarely used to solve disputes. More fundamentally, the bilateral approach of the ICJ does not fit the complex realities of environmental issues in which collective-action problems for a large number of actors are the name of the game. Essentially, courts are set up to solve disputes between two parties—not to solve the broader challenges posed by environmental problems.

It has been demonstrated that the effectiveness of the existing system is mixed, that important achievements have been made, but that difficult problems are rarely solved. MEAs are the backbone in this system, and the role of international courts is marginal. It is hard to foresee that an IEC would contribute much to enhance the effectiveness of the system or to settle disputes because most actors prefer to resolve these through political means rather than litigation. Many of the suggestions for an IEC also seem quite unrealistic, characterized more by wishful thinking than by sober calculations. We therefore tend to agree with Ole Kristian Fauchald in his conclusion that "the establishment of an international environmental court in my opinion should be far down on the list of priorities."[50]

Notes

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20. Zengerling, *Greening International Jurisprudence*; and Stephens, *International Courts and Environmental Protection.*

21. Zengerling, *Greening International Jurisprudence*, 183.

22. James Harrison, "Reflections on the Role of International Courts and Tribunals in the Settlement of Environmental Disputes and the Development of International Environmental Law," *Journal of Environmental Law* 25, no. 3 (2013): 501–14.

23. Alan Boyle and James Harrison, "Judicial Settlement of International Environmental Disputes: Current Problems," *Journal of International Dispute Settlement* 4, no. 2 (2013): 245–76.

24. International Court of Justice, press release, 19 July 1993, 4.

25. Stephens, *International Courts and Environmental Protection.*

26. Joseph Sinde Warioba, "Monitoring Compliance with and Enforcement of Binding Decisions of International Courts," *Max Planck Yearbook of United Nations Law*, vol. 5 (London: Kluwer Law International, 2001): 41–52.

27. Whaling may be important as a matter of principle for Japan, but because it has next to no economic significance, it can hardly be considered an issue of key national interest. Moreover, Japan has since moved its scientific whaling operations elsewhere, so the ICJ decision had no practical significance.

28. Boyle and Harrison, "Judicial Settlement."

29. Other analysts cast the net wider and include prompt releases of fishing vessels. Zengerling, *Greening International Jurisprudence*.

30. The Straits of Johor Case (Malaysia v. Singapore); and Responsibilities and Obligations of States Sponsoring Persons and Entities with Respect to Activities in the Area Case (advisory request by the International Seabed Authority).

31. The Southern Bluefin Tuna (New Zealand v. Japan, Australia v. Japan); the MOX Plant Case (Ireland v. United Kingdom); and the Swordfish Case (Chile v. the European Union).

32. The area is the seabed beyond national jurisdiction.

33. Zengerling, *Greening International Jurisprudence*.

34. Warioba, "Monitoring Compliance."

35. Pedersen, "International Environmental Court," 547.

36. Steinar Andresen and Siri Hals Butenschøn, "Norwegian Climate Policy: From Pusher to Laggard?," *International Environmental Agreements: Politics, Law and Economics* 1, no. 3 (2001): 337–56.

37. Zengerling, *Greening International Jurisprudence*, 304.

38. Pedersen, "International Environmental Court," 549–50.

39. Ole Kristian Fauchald, "Bør etableringen av en internasjonal miljødomstol være et prioritert mål?" [Should establishment of an International Environmental Court be a priority goal?] (preprint version, 2005), https://www.jus.uio.no/ior/personer/vit/olefa/dokumenter/internasjonal-miljodomstol.pdf.

40. Aasmund Willersrud, "Brende vil gi FNs miljøorgan makt" [Brende will give UN's environmental organization power], *Aftenposten*, 8 June 2004, http://www.aftenposten.no/nyheter/iriks/Brende-vil-gi-FNs-miljoorgan-makt-5592020.html; and Ole Mathismoen, "Ber om ny Brundtland-kommisjon" [Asks for New Brundtland Commission], *Aftenposten*, 14 April 2007, http://www.aftenposten.no/nyheter/iriks/Ber-om-ny-Brundtland-kommisjon-5591228.html.

41. Zengerling, *Greening International Jurisprudence*, 306.

42. Ibid., 307.

43. Ibid.

44. Will Nichols, " 'International Court on the Environment Needed for Climate Justice,' Lawyers Say," *BusinessGreen*, 22 September 2014, http://www.businessgreen.com/bg/news/2371371/international-court-on-the-environment-needed-for-climate-justice-lawyers-say.

45. Pedersen, "International Environmental Court," 550.

46. Ibid.

47. Murray Carroll, "It's High Time for an International Environmental Court," *Policy Innovations*, 24 April 2013, http://www.policyinnovations.org/ideas/innovations/data/000240.

48. Stephen Hockman, "The Case for an International Court for the Environment," *Effectius Newsletter*, issue 14 (2011), http://effectius.com/yahoo_site_admin/assets/docs/InternationalCourtForTheEnvironment_StephenHockmanQC_Effectius_Newsletter14.21260322.pdf.

49. Steinar Andresen, "Key Actors in UN Environmental Governance: Influence, Reform and Leadership," *International Environmental Agreements: Politics, Law and Environment* 7, no. 4 (2007): 457–68.

50. Fauchald, "Bør etableringen av en internasjonal miljødomstol være et prioritert mål?" (translated from the Norwegian).