

Legal Protection of Environmental Rights: The Role and Experience of the International Court of Environmental Arbitration and Conciliation

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I. Environmental Rights as a Fundamental Element of Democratic Societies

The second half of the twentieth century has witnessed the development, either under international law or domes-

tic laws, of certain ethical and political parameters which are called human rights. The establishment of the European Court of Human Rights¹ and the provision in many constitutions of systems for an effective judicial protection of these rights, without application of which a society could not be considered democratic, are clear signs of their development. Human rights have become the sign of civilisation for modern societies whose lack converts a State into a tyranny. Therefore every State pretends to respect human rights, even though in many cases this may

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not be true. Likewise social demands claim to be recognised as human rights in order to reach the highest degree of protection. It can be agreed that, if the civilisation process does not end, the twenty-first century will be the century of globalisation of these civil rights which would become a legal common minimum denominator in every or nearly every State. Perhaps the *Ius gentium* was a remarkable predecessor in a different historic moment and another type of civilisation.²

The recognition of human rights as law has been a long process, which each country takes at its own pace. Although the landscape of violations of human rights is frightening, the number of persons who now enjoy a reasonable level of human rights is gradually becoming larger.

It is in this context that concern about environmental degradation can be placed. Initially it is channelled through administrative law in the form of obligations to conserve the environment. Naturally, whenever the legal system creates a new obligation for the public administration, an individual or a society must comply with the obligation of action by the administration. This is the simplest example of the right to an adequate environment, the right to request the conservation of the environment.³ In international law, instruments for the protection of the environment are increasing in the classic form established by the law of the treaties; this means that the subjects to be obliged and to be entitled with rights are States, not individuals.⁴

Philosophy and legal literature keep on reflecting on the object "environment" and on the subject entitled to enforce the right, and many authors have already concluded that we are on the advent of a subjective right enforceable "erga omnes" and of a fundamental nature, to be located in the category of human rights. It is true that a human right to the environment normally belongs to the third generation or solidarity rights and is therefore among the most generic, ambiguous and complex rights as regards judicial control. However, it has to be underlined that the environment we are enjoying right now is not the fruit of human solidarity but the result of the relationship between life-supporting systems, although we may need human solidarity to protect it. Moreover, the maintenance of the biospheric parameters of which the environment consists is necessary for the human species and other creatures to remain alive.⁵ Thus, the right to an adequate environment is firmly attached to the right to life: without the environment, no life is possible.

Most environmental lawyers only accept a procedural concept of the right to the environment; this means that it has a triple content represented by the right to information, the right to participation and the right to administrative and judicial review. This limitation is based on the difficulties involved in reaching agreement on a concept of environment which can be legally determined and is amenable to judicial control.⁶ However, procedural law cannot be applied if there is not a substantive right to be protected. In our view, then, the right to an adequate environment is a substantive right and we must keep on trying to achieve a proper construction of its doctrinal basis. The

features that characterise a subjective right exist here because there is a subject, an object and a legal relationship. All humans are subjects of this right, whilst its object is the environment, and the legal relationship is constituted by the law – the constitution, with pertinent, statutes as well as unwritten principles – which determines the way in which humans may use and enjoy the environment and natural resources.⁷

What can be easily demonstrated under domestic law is not so clearly discernible at the international level. Many declarations on the environment or on human rights do not have a binding nature but are simple soft law. Some treaties on human rights, such as the European Convention on Human Rights, do not expressly recognise a right to an adequate environment. Most of the treaties do not confer rights on individuals, sub-State bodies or corporations, being only commitments between the different States.

Nevertheless, there is nothing more obvious than the universal nature of the right to an adequate environment. This is true in two senses: all individuals are entitled; and, all elements of the right are linked between each other and beyond particular geographic areas. Therefore national borders are not adequate for the management of the environment from a legal point of view. States may have different family laws or inheritance laws, different ways of electing a parliament or controlling the administration, even different tax or criminal laws. But the protection of a global object such as the environment requires some common legal principles worldwide, notwithstanding the possibility of every nation to adjust them to its legal culture and environmental needs.

This is not the first time that this problem has emerged. International trade is a key element for human progress; it basically rests on a juridical infrastructure provided by a societal law that we call "*Lex mercatoria*".⁸ The task of environmental law researchers is to create an adequate legal basis that we may call "*Lex terrae*",⁹ and that has to be a doctrinal and judicial creation because the speed we need for giving a legal answer to pressing environmental problems rules out reliance on customary law.

In addition, judicial enforcement of environmental rights applying domestic law by national judges meets with two main problems: on the one hand, the existence of many transboundary disputes that only because of the absence of an international jurisdiction are finally resolved by domestic courts; on the other hand, the difficulties in giving international law supremacy over the domestic laws that exist in many countries. The real situation shows that, subject to some exceptions, national courts do not effectuate customary international law or principles of international environment law to the extent that individuals, non-governmental organisations and municipalities can derive rights from their violation. Moreover, most of the treaties do not confer rights on individuals, non-governmental organisations or municipalities, being only agreements of the different States. Non-compliance with them does not entitle any injured party to raise claims directly against the State; rather, the victim has to ask its own State for

diplomatic protection. The decision on this type of claim is discretionary so that political pressures can lead to the decision by the injured State not to raise the claim, and thereby the injured individual of that State will have no chance of enforcing the treaty.

In this context it is necessary to insist on comparative law. Due to the importance of the knowledge of theory and practice of environmental law in every State, it can play a crucial role in creating a common legal culture.

II. Judicial Protection of Environmental Rights

1. Existing mechanisms

In States with a developed legal system and an independent, properly functioning judiciary, environmental rights can in principle be enforced by bringing an action before national courts, either in litigation between private parties under private law or in litigation against the State and its subdivisions under public law. However, for a variety of reasons, especially in developing, threshold and transformation States, access to the judicial system as a means for implementing and enforcing environmental law in the interest of affected persons and the public meets with major obstacles. An indication of the existing deficiencies is the call of the Rio Declaration (principles 10 and 26) on States to provide "effective access to judicial and administrative proceedings, including redress and remedy". The reasons are manifold. One could mention in particular the malfunctioning of courts, the weak role law plays in society, limited standing to sue, and cost barriers. In Europe, the Aarhus Convention,¹⁰ when it has come into force, will improve the access of individuals and non-governmental organisations to judicial review of administrative action in the field of the environment, but from a global perspective, even at a national level arbitration and conciliation must be considered as an alternative worth pursuing. In any case, as soon as environmental rights are vindicated in an international context such as transboundary pollution or harm to the global environment, including the national implementation and enforcement of multilateral or bilateral environmental agreements, the court model is fraught with major flaws. This must be seen as part of the background for why national implementation of environmental conventions is still deficient.¹¹

Experience with transnational litigation for compensation and injunctive relief before civil courts shows that, although the plaintiffs almost invariably choose the more trustworthy and convenient national forum to raise claims against foreign polluters, they are seldom successful.¹² Apart from minor cases, the litigation on the salination of the Rhine before Dutch courts is a notable exception.¹³ The same negative assessment is true of claims raised against the home State for harm caused by lack of diplomatic protection.¹⁴ Respect for permits accorded by the relevant foreign authorities, recognition of sovereign immunity of foreign States who act as operators of polluting facilities, denial of judgment because of unenforceability abroad, and voluntary abandonment of the claim by disil-

lusioned plaintiffs count among the major reasons for this. Moreover, the complexity of transboundary litigation as well as its potential costs deters potential plaintiffs so that the number of transnational civil court actions is bound to be limited.

As for litigation under public law against a foreign permit authority, the action must be brought in the relevant foreign State as the home State lacks jurisdiction to review sovereign acts of a foreign State. Here one can state that there is, at least in Europe, a certain tendency to grant plaintiffs standing to sue and to abandon the traditional principle of territoriality which would exclude out-of-State effects from the scope of protection of national environmental laws.¹⁵ However, this is by no means a universal trend.¹⁶ Moreover, the practical difficulties of foreign litigation against a State, the complexity of issues raised by it, the unavailability of sufficient interim injunctive relief, and the cost risks involved will normally result in such litigation not being considered as a realistic option by many victims of transboundary environmental harm or non-governmental organisations representing them or the public interest.¹⁷

These deficiencies of judicial protection of environmental rights by recourse to national courts are not compensated for by the availability of international judicial review. There are various international courts, such as the International Court of Justice, the International Tribunal for the Law of the Sea, the European Court of Justice and the European Court on Human Rights. In addition, the WTO dispute settlement bodies may decide on environmental matters. However, these courts provide a forum for international adjudication of environmental rights only to a very limited extent. The jurisdiction of the International Court of Justice and the International Tribunal for the Law of the Sea requires agreement by the parties. Moreover, only States have direct access to the International Court of Justice and, subject to minor exceptions especially in case of seabed activities,¹⁸ to the International Tribunal for the Law of the Sea. Direct access of non-governmental organisations and private persons to the European Court of Justice is extremely limited by a narrow interpretation of the standing criteria set forth in article 230 (ex article 173) EC Treaty,¹⁹ while indirect access via the reference procedure established by article 234 (ex article 177) EC Treaty is conditional on access to national courts and depends on the reference behaviour of these courts. The European Court of Human Rights has recently aimed at improving environmental protection through an expanded concept of human rights. Although the Convention only contains traditional fundamental rights, the Court interprets the rights to life and physical integrity (articles 2 and 3) and the right to privacy and family life (article 8) so as to protect individuals against environmental harm.²⁰ However, the protection of the environment through fundamental rights is limited to the "environmental minimum" of existing or imminent serious harm.²¹ Also, the requirement of exhaustion of national remedies at all stages of jurisdiction considerably weakens the role the European Court of Human Rights could play in making

environmental rights effective. Other human rights texts such as the Universal Declaration on Human Rights or the Inter-American Convention on Human Rights have not yet been broadly interpreted to the extent that they establish rights to the environment.²² Finally, the WTO system does not recognise individual rights.

2. Need for international arbitration and conciliation

The deficiencies of national and international adjudication of environmental disputes lend support to the proposition that judicial protection of the environment, especially of environmental rights, must be strengthened at international level. This is the source of the idea to establish an International Court for the Environment which since 1988 has been strongly advocated by Amedeo Postiglione and the Foundation for the International Environment Court headed by him.²³ Indeed, there are good arguments for such an institution, such as the existence of many pressing environmental problems unresolved or even unaddressed today, the need for a court consisting of experts in international environmental law, the need of individuals and non-governmental organisations to have access to international adjudication, and the need to decide on questions of interpretation, implementation and enforcement of multilateral environmental agreements.

Some authors point to the problem of fragmentation of international jurisdiction and the potential fission of international law of the environment and general international law; they would prefer a new role for national authorities and courts which would have to integrate national administrative and international law of the environment: in other words enrich national administrative law by international law.²⁴ While this may be a solution in some countries with an enlightened administration and judiciary which are prepared to decide in a true international spirit, it does not seem realistic to expect that the normal national bias of administrators and judges can be easily overcome, not to speak of the structural deficiencies of adjudication of environmental disputes in the majority of countries.

On the other hand, one must admit that the model of an International Court of the Environment is more a vision for the future than a realistic perspective for the present. Until such a court is established – and even after its establishment – institutional arbitration and conciliation could provide a flexible mechanism for the settle-

ment of environmental disputes fulfilling many needs and at the same time initiating a learning process at the end of which the international community could decide (on the basis of practical experience in adjudicating international environmental disputes) which system is more appropriate.

Some international treaties on the environment lodge the resolution of disputes to arbitration and conciliation. This, for instance, is true of the Convention on Biological Diversity, the Convention on Climate Change and the Basel Convention on Transboundary Movement of Waste. In our opinion, it does not seem appropriate to resolve each conflict by an *ad hoc* panel of experts. In this way, the homogeneous development of environmental law that we need to protect the planet is not secured. *Ad hoc* arbitration, in



A field of corn poppies, Germany

Courtesy: Gisela Pölking for EH Foundation

which different persons may take part, bears the risk of a slower construction of environmental law with more frequent contradictions between judgments. One must try to incorporate all legal cultures of the world into the court, which requires an institutional solution. Therefore an institutionalised arbitration and conciliation with a limited list of arbitrators and conciliators, but permanently in touch with the evolution of environmental law, is a better way to guarantee the construction of the structure of environmental law. This is the way that international trade law is developing, with positive results.

International disputes on the environment raise a number of different issues, and therefore the tasks to be entrusted to institutionalised arbitration and conciliation would be varied. On the one hand, there is the problem of disputes between States as to the interpretation, implementation and enforcement of multilateral or bilateral in-

ternational environmental agreements which, as the reference of some conventions to arbitration and conciliation as a mechanism for dispute settlement evidences, is a genuine role for arbitration and conciliation. Moreover, a court of arbitration and conciliation could make an important contribution to further developing the international law of the environment. In particular, it could "mold emerging environmental law principles ... with a view to giving these principles a sense of coherence and direction".²⁵ Emerging principles of international environmental law, many of which are spelt out in the Rio Declaration, include the principle of sustainable development, the precautionary principle, the principle of prevention, the principle of conservation of biodiversity, the polluter-pays principle, the principles of solidarity and shared but different responsibility, the principle of restoration, the principles of participation and information, and the principle of effective judicial control.²⁶

A further major, if not *the* major, task of institutionalised arbitration and conciliation of environmental disputes would be to protect the individual right to an adequate environment by granting individuals and non-governmental organisations access to adjudication, and developing the substantive right to the environment based on existing international human rights, some of the principles just mentioned and statutory law applicable under the relevant conflicts rules. This would comprise prevention, restitution and compensation of environmental harm. The deficit analysis presented above clearly shows that individuals are not adequately protected in international disputes on the environment, and their role must be strengthened. The same is true of non-governmental organisations which represent the interests of individuals or the public. Enabling them to vindicate individual interests takes account of the diffuse character and the ensuing collective nature of environmental harm. Allowing them to vindicate the public interest reflects the ongoing democratisation of modern pluralistic political systems, including the international community. As a – desired – side-effect this would also enhance the control of the administration of the relevant States in the field of the environment.

Finally, institutionalised arbitration and conciliation could also play an important role in assuming adjudicatory functions in the emerging systems of international self-regulation such as standardisation, certification/ecolabelling and environmental management.

Agenda 21 (No. 39.10) calls on States "to further study mechanisms for effective implementation of international agreements, such as modalities for dispute avoidance and settlement", specifically mentioning, besides non-compliance procedures, arbitration and conciliation. However, non-confrontational compliance procedures as well as their functional equivalent, the mandatory negotiation procedure via the Conference of the Parties which have entered into many modern multilateral environmental agreements,²⁷ do not sufficiently reflect the problem of direct State responsibility for environmental degradation or potential conflicts between State and citizen interests;²⁸ they exclude non-governmental organisations and individuals from oversight over the implementation and enforcement

behaviour of States parties to a convention. Therefore, they do not render adjudication, especially in the form of arbitration and conciliation, unnecessary. Moreover, non-compliance mechanisms are limited to environmental conventions and do not cover the protection of environmental rights in the absence of an international convention.

A final question concerns purely domestic environmental disputes. If the analysis presented above is correct, there are good arguments for also opening the dispute settlement mechanisms presented by international arbitration and conciliation to conflict parties who are involved in purely domestic conflicts about environmental protection. Deficiencies in the relevant national system of judicial protection of environmental rights can, at least to a certain extent, be compensated for by international conflict settlement which, due to the international standing and neutrality of institutional arbitration and conciliation, may be more acceptable than national institutions. Of course, as in the case of international environmental disputes, national administrative law may prohibit any submission to arbitration and conciliation.

3. Voluntary or mandatory adjudication?

There is no denying that the viability of institutional arbitration and conciliation with respect to international environmental disputes ultimately depends on the will of States. Without insertion of dispute settlement clauses into multinational or bilateral environmental agreements or other kind of voluntary subjection, arbitration and conciliation cannot function. Moreover, compliance with arbitral awards or settlements reached through conciliation is voluntary, although one may argue that, since the relevant State has submitted itself to the jurisdiction of the court of arbitration and conciliation, it will be more prepared to comply with the award or settlement. One should try hard to convince States of the advantages arbitration and conciliation provide for the settlement of international environmental disputes. This will be a lengthy process. In any case, it is encouraging that there is a growing use of settlement clauses in environmental conventions.

In the absence of advance or *ad hoc* agreement of the conflict parties as to taking recourse to arbitration and conciliation, some mechanisms should be developed to offer the victim an international forum for a declaratory non-binding adjudication of the dispute. This could be done by vesting powers in the court of arbitration and conciliation to issue a consultative opinion which does not bind the other party but contains a pronouncement as to the merits of the claim alleged by the victim.

III. The Experience of the International Court of Environmental Arbitration and Conciliation

1. Origin of the Court

At the International Congress on Environmental Law held in Cuernavaca (Mexico) in May 1993 one of the authors of this article, Demetrio Loperena, worried about the absence of adequate control on compliance by States

with international environmental law, proposed the creation of an International Court of Environmental Arbitration and Conciliation. The idea was welcomed by the participants of the congress and led to a series of discussions among academic experts on the subject, resulting in a call to those who agreed with the idea to a meeting in Mexico City on 21-23 November 1994. They agreed to constitute the International Court of Environmental Arbitration and Conciliation as a civil association under Mexican law. During the constitutive session the Secretary-General and the Secretary-General Assistant were appointed,²⁹ the provisional statutes approved and a list of experts on environmental law to become members of the Court decided. This decision was made in the form of a closed list, but open to other legal cultures. Initially it was formed by professors of 26 different nationalities.³⁰

The statutes were set forth during three plenary sessions held by the Court. The first of them was held in San Sebastian (Spain) on 19 and 20 July 1995, the second in Mexico and Cancun between 27 November and 4 December 1995, and the last in Epidaurus (Greece) on 12 and 13 September 1996.

The Government of Mexico and the first Secretary-General of the Court, Dr Ramón Ojeda Mestre, originally supported an office in Mexico D. F for institutional representation of the Court. Meanwhile, thanks to the funding support from the Basque Government and the University of the Basque Country, the administrative office of the Court has been set up in San Sebastian, Spain, for processing the Court cases. The institution thus began its operation, and has continued operating until today.

2. Modes of Operation

Access to the Court is not limited. Parties may be natural or legal persons, public or private, national or international. In particular, the procedure is open to individuals or non-governmental organisations who challenge administrative decisions taken by States and their subdivisions with applicable law. Although the emphasis of Court activities was assumed to rest on international conflicts, its jurisdiction is not limited; in principle it comprises all environmental disputes including national ones (articles 1 and 12 of the Statutes). During the discussions on the Statutes of the Court, it was underlined that with respect to States where judicial review of administrative action or inaction affecting the environment, for legal or factual reasons, does not function well there may be a need for recourse to an international court of arbitration and conciliation, its advantage being the higher legitimacy of the body due to its international composition. However, with respect to consultative opinions, the Statutes limit the jurisdiction of the Court to "legal questions of international concern relating to the environment" (article 49) because in this case the activities of the Court rest on the unilateral request of a party rather than on an agreement by both parties. It follows from this broad scope of jurisdiction that the substantive rules on which the Court can base its decisions and opinions must also be broad.

The Court can deal with the following types of procedures for the resolution of disputes:

- international treaties of environmental protection, especially the compulsory provisions contained therein;
- general principles of international environmental law;
- relevant national law, in accordance with generally accepted rules of private international law and other pertinent rules of conflicts of law;
- any other principles, rules or standards which the Court deems relevant, including equity.

The activities of the Court comprise the following three procedures:

a. Arbitration

Any public or private entity may submit a written request for arbitration to the Court. When both parties have previously concluded an arbitration agreement the procedure is opened with the request. If not, the Court will send a copy of this request to the other party. Once both parties have consented to arbitration by the Court, a tribunal will be constituted by an odd number of arbitrators (if nothing to the contrary is agreed, the number will be five). The composition of the tribunal and the procedure to be followed closely resemble the pattern established in international commercial arbitration. Of particular importance in environmental disputes is the power of the tribunal to appoint one or more experts and the option for the parties to present their own experts. The Court will resolve the dispute in accordance with applicable law, unless the parties agree to a resolution "ex aequo et bono". Moreover, if necessary, the Court may recommend the adoption of provisional measures which it considers necessary for safeguarding the environment or the rights of the parties. The award must be given in writing, containing a statement on all the claims submitted by the parties to the Court.

b. Conciliation

When a petition for conciliation is received by the Court, a copy of it must be forwarded to the other party. Once intervention by the Court has been accepted by both parties, a commission comprising an odd number of conciliators (five, if there is no agreement to the contrary) will be appointed in agreement with the parties. It has to be emphasised that if the defendant party rejects the conciliation, the petitioner may request a consultative opinion in order to let the Court give its considerations in law; thus an objection by the defendant does not leave the petitioner without a remedy. The commission has to clarify the points of controversy between the parties and aim for an agreement between them, under conditions acceptable to both sides. If, at any time during the proceeding, the commission decides that there is no chance of achieving an agreement between the parties, it may declare the procedure closed and draw up a document, making note of the fact that the controversy has been submitted to conciliation without an agreement having been reached. ➤

c. Consultative opinions

The Court may issue consultative opinions in relation to any legal matter of international concern on request of any kind of entity, whether public or private, national or international. Consultative opinions are available on application to the Secretariat, unless the party applying for the opinion requests otherwise.

Consultative opinions may have the following nature: preventive, in order to ascertain whether a proposed project is compatible with environmental law; confirmatory, which means that it is confirmed that an action has been carried out in compliance with environmental law; and denunciatory, *i.e.* enquiring whether an action by another person complies with environmental law and, if not, making that information available to the international community.

3. Cases

Since its foundation, the Court has received quite a number of applications all of which involved conciliation. This shows that there is a need for international arbitration and conciliation in environmental matters. However this relative success of the Court does not mean that every petition could be processed until the final procedural phase.



Desert, Namibia

Courtesy: Ute Niesters for EH Foundation

Quite often, the petitioners abandoned the case. Apart from this, there are three common features to observe. First of all, the geographic origin of the cases concurs with the residence of some of the most active members of the Court, where the existence of the institution is well known. Another characteristic of the cases is that public institutions named as defendants in every case rejected the petitions for conciliation, probably because in their countries they enjoy the privilege of compulsory enforcement of their acts and they see no reason to take the risk that their act not be enforced. A third and last feature is that petitioners are in most cases affected citizens or conservationists with-

out economic resources to afford an ordinary procedure of the Court. Therefore in 1998 the General Secretariat established a system of free justice for those petitioners without financial resources, provided that the Court is able to afford the administrative expenses.

a. Itoiz case

This case deals with a dam constructed in the Western Pyrenees range in the Navarre province in Spain. The project includes the flooding of certain villages. The capacity of the reservoir is 635,000 cubic metres and the height of the dam is 135 metres. The works were commenced on 15 May 1993.

The affected inhabitants challenged the project, relying on three considerations:

- They alleged that the decision on the project was illegal because Spanish law requires an act of Parliament prior to the construction of such an important work.
- They contended that the project was illegal because environmental impact assessment had not been carried out for the whole project. Instead, the work was divided into different parts, *inter alia*, the dam, the quarry, a new road, a channel for water conduction in two studies and the irrigation systems.
- Finally, the petitioners alleged that the dam water would flood certain special bird protection areas (ZEPAS), nature reserves established in application of community law, and threaten these areas.

The Spanish courts were favourable to the arguments of the affected citizens, declaring the decision originally made on the dam to be null, based on the first and third considerations. Surprisingly, the division of the project into several parts for the purpose of carrying out separate environmental impact assessments was considered to conform with the law.

Regarding the first consideration, once the administrative court declared the project void, the Spanish Parliament enacted Act no. 22/97 which accorded the approval of the Itoiz dam the status of a formal law. After the judicial declaration that the project was invalid, the third consideration was evaded by Act no. 9/96 of the Navarre Parliament modifying the borders of the ZEPAS to permit the flooding of the dam. The Spanish Supreme Court, which had declared the project to be illegal, requested a holding by the Constitutional Court as to the possible unconstitutionality of the aforementioned act, based on its possible main objective to impede the enforcement of a judgment, which also violated the separation of powers principle and the rule of law.

The Constitutional Court in its Judgment 73/2000 sustained the constitutionality of the Act, and the affected citizens decided to apply to the European Court of Human Rights, alleging the violation of the human right to a fair trial.³¹

This summary gives an idea of the legal complexity of the case. It should be added that certain criminal claims were also lodged against the administrative authorities, and that administrative procedures were pursued before different courts by reason of the territory affected or the nature of the matter. The jurisdictional dispute has continued for ten years. In our view, this is an example of how a social conflict on an environmental matter can be split into various jurisdictional claims, which results in an inadequate application of environmental law. Political pressures had been exerted to overrule law when deemed necessary to push the project through.

The affected group also requested a conciliation with the Spanish Government before the Court in December 1995. The petition was rejected by the Ministry of Civil Works and Environment. After the general elections of 1996, the new ruling party promised a dialogue on the matter. Therefore the petition was forwarded again but rejected by the new Spanish Government. The affected group did not request a consultative opinion.

b. Cerro Largo case

Through a member of the Court a petition for a consultative opinion was received by the Court during 1996, signed by the municipal authority of Cerro Largo Department (Uruguay). The Plenary of the Court granted the admissibility of the application. The case concerns emissions into the air from a power plant located near the border with Brazil. The emissions posed a serious risk for the health of the inhabitants of the affected town, and also harmed agricultural production. The Court could not give an opinion because the action had lapsed. Nevertheless, some time after the procedure had lapsed, the Brazilian Government decided to privatise the company that operated the power plant, requiring strict compliance with the emission standards which had been systematically violated. Likewise, a bilateral agreement was signed between Uruguay and Brazil.

c. Zaga Vaca case

During 1996, another petition for a consultative opinion was received.

The petitioner had registered before the Patents and Trademarks Authority of Mexico (through the Industrial and Intellectual Property Authority) a procedure for the separation, packaging, storage, collection, transport and final disposal of biologically infected hospital waste, as well as chemical products and wastes of any nature whatsoever that may present any risk to health and the environment. The petition requested, first of all, an opinion on the compatibility of this procedure with foreign environmental laws. As a second step, an opinion was requested on the possibility of registering the procedure and offering the services of the petitioner's company in some countries outside Mexico. Finally, the petitioners considered

the possibility of including in the consultative opinion a legal pronouncement on the necessity to reclassify solid municipal and household wastes, because when they are collected together they are polluted by each other, becoming potentially contagious, toxic, explosive or combustible.

In application of article 13 of the Statutes of the Court, the Chamber in charge of pronouncement on the admissibility of the case decided as follows:

- Regarding the possibility of registration of the system patented by Mr Zaga Vaca in other countries, the petition was declared inadmissible. The same was true concerning the legal possibility of the company to offer services in other countries, on the grounds that a decision on these matters was not a proper function of the Court.
- At the same time a more detailed description of the method patented in Mexico was requested, as well as the attachment of the necessary legal documentation in order to consider issuing a consultative opinion with regard to its compatibility with the environmental legislation of other States. Moreover the Court requested a clarification of the petitioner's request regarding the re-classification of solid municipal and household wastes.

After this pronouncement, the Court waited for the answer of the petitioner and because this was not forthcoming the procedure lapsed.

d. Case on the Enlargement of Barajas Airport

Due to the overcrowding of Madrid-Barajas Airport, the Spanish Government decided in 1993 to build a third take-off runway. During the proceeding, various violations of domestic and international law were allegedly committed, which led to various complaints being brought before the administrative courts.

On 29 July 1997 the legal representative of the 14 affected towns requested before the Court a conciliation with the Ministry of Development (which was the agency responsible for the works). The request was declared admissible. It may be pointed out that the application is a rare example of a perfect brief containing a description of the object of the dispute, together with the names and addresses of all the affected parties, the express declaration of the municipalities of submitting themselves to the conciliation activity of the Court, and a brief explanation on the topics that shall be subject to friendly settlement.

The petition was forwarded to the affected parties: the Ministry of Environment, Ministry of Development, and the Public Corporation Spanish Airports and Air Transport. The defendants refused to accept the conciliation. The procedure is still pending at ordinary courts, even though the third runway is already in operation.

e. Hidalgo case

In November 1994, by agreement of the local council a plan for the urban development of Ciudad Hidalgo, in Suchiate, Chiapas, Mexico, was approved. Its second article established that the provisions of the plan were com-

pulsory for individuals, juridical persons and public entities of the federal, State and local administration. In the plan for urban development, under the topic of accessibility and transport, the construction of a new road junction with a new international bridge to prevent freight carriers from passing through the town centre of Hidalgo was also approved. In 1996 it was decided to construct the bridge three kilometres up-water from the original one, connecting Ciudad Hidalgo (Mexico) with Tecún Uman (Guatemala).

An association of professionals from Ciudad Hidalgo, Chiapas and the Local Council for the Agricultural Development of Suchiate, together with the people of Tecún Uman (Guatemala), were of the opinion that this breached the development plan and was contrary to the interests of both border towns because they would become isolated and their economic, touristic, political and commercial development would be badly affected.

In the General Secretariat of the Court a petition for conciliation was presented by the affected parties. The petition was forwarded to the major of Tecún Uman municipality (Guatemala), the Governor of Chiapas State (Mexico), the Secretary of Foreign Affairs of Mexico and Guatemala, and to the Secretary of Communications and Transport of Mexico. The defendants rejected the conciliation.

f. Sierra Blanca case

The Commission on Human Rights of the National Political Council of the PRI³² (Mexico) requested before the Court by writing received at the General Secretariat on 31 July 1998 the issuance of a consultative opinion on the installation of a radioactive waste deposit in Sierra Blanca (Texas, USA).

On May 1998 the United States Environmental Protection Agency granted authorisation for the construction of a deposit for low-level radioactive waste in Sierra Blanca (USA) only 32 kilometres from the border with Mexico. The Commission for the Conservation of Natural Resources of Texas also granted a licence for the construction of the controversial deposit, in spite of protests by several authorities from towns on both sides of the border. It was alleged that the authorisation violated the "Agreement on Co-operation for the Protection and Improvement of the Environment in the Border Area between Mexico and the United States".

The Commission on Human Rights of the National Political Council of the PRI, concerned with the unilateral decision of US authorities to establish the deposit, presented a formal protest before the US Government, maintaining that, since environmental protection is a priority task and a responsibility of the international community, it is illegal to take unilateral decisions in breach of the agreements concluded on the subject. Pursuant to the Commission's opinion, the decisions were in violation of the provisions of the 1983 Agreement on Co-operation for the Protection and Improvement of the Environment in the Border Area between Mexico and the United States. This agreement provides that the parties should take necessary measures for the prevention, reduc-

tion and elimination of the sources of pollution in their respective territories which may affect the border area, located within 100 kilometres of each side of the border, either on land or at sea. The Commission recognises that it is the responsibility of the US Government to decide on the Sierra Blanca project, which constitutes a sovereign decision, but the US must observe the applicable international legal provisions.

The Admission Committee accepted the application. Afterwards, a provision of funds was requested to cover the ordinary expenses of the procedure. The petitioners desisted from pursuing the petition due to a lack of funds. Since this experience, a brief procedure of free justice was approved for plaintiffs with no lucrative aim.

g. Sonora case

On 17 August 1998 the General Secretariat of the Court received a petition from Domingo Gutierrez Mendivil, on behalf of the Sonora Academy for Human Rights (Mexico) to issue a consultative opinion regarding the transport and spill of toxic wastes in an area close to the border between Mexico and the United States.

During 1991, the Mexican Federal Government's Urban Development and Ecology Department ordered the definitive closure of Alco Pacifico of Mexico S.A due to its illegal importation into Mexico of car batteries and soil contaminated with lead for the false purpose of recycling these waste materials. Then, around 30,000 cubic metres of lead-contaminated waste, most of which had been illegally imported from the United States, were left in the "El Florido" Ranch, Tijuana (Mexico); the waste was transported from "El Florido" ranch to the town of Hermosillo, Sonora. In the opinion of the petitioner, the transportation of such toxic waste was in violation of the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal, because Mexico received no request to authorise the import of the waste. It has to be added that the Mexican General Act on Ecological Balance and Protection of the Environment prohibits the importation of dangerous wastes whose sole object is final disposal or deposit. Thus, in the petitioner's opinion, according to the provisions of the Basel Convention, the United States would be obliged to re-import the dangerous waste which was wrongfully introduced into Mexico by Alco Pacifico S.A. With the present request before the Court, the petitioner requested a declaration as to whether the toxic waste should be returned to its original source.

The case followed the brief procedure and after admitting the petition the Chamber of Consults was appointed for the issuance of a consultative opinion whose reporter was Professor Ramon Martin Mateo.

The Consultative Opinion is dated 7 April 1999.³³ In its opinion, the Court briefly considers that the Basel Convention is inapplicable because it was not in force either for the United States or for Mexico when the transport occurred. Notwithstanding this, in view of doctrines and principles unanimously accepted by the international community, the Court understands that the harm caused must be indemnified and the United States must take back the waste at its cost.

h. Hyla Meridionalis case

This case concerns the protection of the *Hyla Meridionalis*, which is a frog species protected by the Berne Convention, ratified by Spain on 13 May 1986, as well as by European and domestic legislation. Its habitat in the Basque Country (Spain) was seriously altered by a management plan for the frog, the main implication of which was moving the species in order to permit the construction of an industrial pavilion in the Gurelesa pond, where most of the members of this species lived. The conservation association Haritzalde contested the project, lodging all kinds of legal claims before the administrative and criminal courts. Meanwhile, aware that an adequate solution may not be afforded by various unconnected judgments, on 10 January 2000 the association presented before the Court a petition for conciliation with the Basque Government and the Provincial Government of Gipuzkoa. After the petition had been admitted, both institutions rejected the conciliation, so the conservation association Haritzalde requested a consultative opinion with regard to the legality under international law of the management plan approved by the Provincial Government of Gipuzkoa.

After the Chamber of Consults had been formed by five members of the Court, (reporter, Professor Zdenek Madar), the following consultative opinion was issued on 21 December 2000: the management plan of the *Hyla Meridionalis* was in breach of the Berne Convention on the Conservation of European Wildlife and Natural Habitats of 1979 and also in violation of the Convention on Biological Diversity of 1992.

The consultative opinion was presented before the criminal court which, in view of the considerations contained therein, ordered the stay of the recently started work. At this time there were three parties in conflict, the conservation association Haritzalde, the promoting company of the industrial pavilion and the Provincial Government of Gipuzkoa. The Secretary-General Assistant had conversations with the three parties, proposing a conciliation agreement. Ultimately the parties did not proceed with the Court's aid, but reached a settlement without mediators. Under the agreement the conservation association Haritzalde promised to stop all judicial procedures, the Provincial Government agreed to modify the management plan in such a way to ensure the survival of the species under the control of a scientific organ, and Neinor assumed the obligation of carrying out the relevant works and agreed to respect the Gurelesa pond for a pe-

riod of time sufficient to allow the frog to become acclimatised to other ponds.

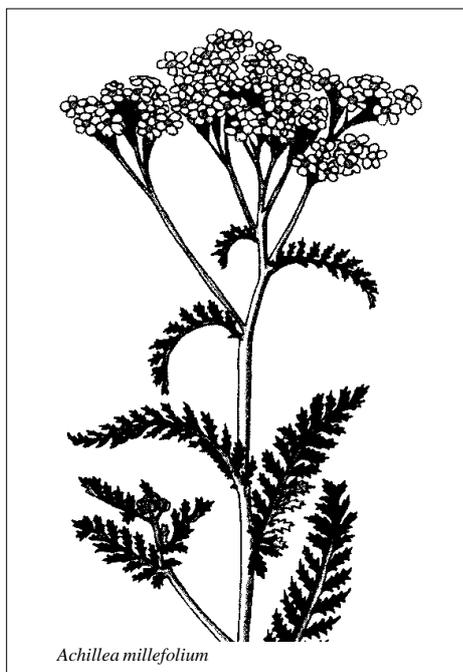
i. Pending cases

With regard to currently pending cases, more detailed information can only be given after they have been concluded, should the parties agree to this.³⁴

IV. Resolution of Environmental Disputes by the Permanent Court of Arbitration

Recently, the Permanent Court of Arbitration (PCA), The Hague, has also entered the arena of dispute resolution in the field of the environment. In an Extraordinary Meeting held on 19 June 2001, the 94 Member States of the PCA adopted by consensus a set of "Optional Rules for Arbitration of Disputes Relating to Natural Resources and/or the Environment".³⁵ The idea of establishing the PCA as a forum to resolve environmental disputes was born at the First Conference of the Members of the Court in 1993 and since has been strongly supported by various organisations and individuals, in particular the International Court for the Environment Foundation.³⁶

The application of the new rules requires agreement of both parties, either in advance or on the occasion of a dispute. The rules are available to all parties who have agreed to use them, namely States, intergovernmental organisations, non-governmental organisations, multinational corporations and private parties. They may be used in disputes between States parties to a multilateral or bilateral convention regarding its interpretation or application; they may be applied to disputes between a State and a non-governmental organisation, multinational corporation or private party; or they may be used in disputes involving any of the latter parties alone. The terms "natural resources" and "environment" are not defined. Natural resources arguably include non-renewable natural resources (raw materials), and one cannot help but assume that in the future the PCA Rules may prove to be particularly attractive in investment disputes between a State and a multinational corporation involving the mining of raw



Achillea millefolium

materials. The characterisation as relating to raw materials and/or the environment is not a necessary condition for jurisdiction, as the parties can agree to submit themselves to the arbitration rules in any other kind of dispute.

The new rules constitute an adaptation of the Uncitral Arbitration Rules to multi-party environmental disputes. The rules specifically address the problem of speeding up procedures as well as scientific and technical evidence. They are limited to arbitration. As regards conciliation,

there are no special rules for environmental conflicts. However, "Optional Rules for Conciliation of Disputes Relating to Natural Resources and/or the Environment" are also being prepared. There are no provisions to issue consultative opinions in the absence of agreement by both parties. It remains to be seen to what extent the new rules will actually be used by conflict parties. As yet, the International Court of Environmental Arbitration and Conciliation has received no request for arbitration. Since 1992 and 1993 respectively, there have existed PCA "Optional Rules for Arbitrating Disputes between Two States"³⁷ and "Optional Rules for Disputes between Two Parties of Which only One is a State".³⁸ However, apparently acceptance by potential conflict parties has been lacking.

In future, one might assume that conflicts between States parties to an environmental convention as well as conflicts between States and multinational corporations on natural resources could be submitted to arbitration under the PCA rules. Since the PCA is an international organisation borne by 94 States, the PCA may be deemed by some parties to reflect a higher degree of legitimacy than the largely private International Court of Environmental Arbitration and Conciliation. Thus, if the present preference of States for non-confrontational dispute settlement mechanisms in international conventions on the environment can be overcome, it may well be, as has already been done in the past in the Bonn Convention on the Conservation of Migratory Species of Wild Animals of 1979,³⁹ that signatory States will submit themselves to PCA arbitration.⁴⁰ The same is true of investment agreements between States and multinational corporations. However, it is doubtful whether PCA arbitration will be attractive to non-governmental organisations.⁴¹

V. Conclusion

The experience of the International Court of Environmental Arbitration and Conciliation shows that from the point of view of concerned individuals and NGOs, there is a need for international adjudication of environmental conflicts. However, States and their subdivisions are reluctant to submit themselves to such adjudication, especially in relationships with individuals and NGOs. Although one may safely state that the international law of the environment has gone some way in strengthening the role of non-State actors, there is still a long way to go before access of these actors to international adjudication will be fully recognised. In the meantime, besides the Permanent Court of Arbitration, the International Court of Environmental Arbitration and Conciliation, especially in view of its flexible procedure for issuing consultative opinions, offers an international forum for accommodating the need for some sort of international adjudication of environmental conflicts. An important barrier is constituted by the costs of litigation. The Court has responded to this problem by introducing a shortcut procedure which is gratuitous, but in the long run other solutions such as an international legal aid fund would be preferable.

Notes

¹ European Court of Human Rights, Treaty signed at Rome on 4 November 1950, in force since September 1953. The European Court of Human Rights began its activities in 1959. See <http://www.echr.coe.int>.

² See A. Boyle & M. Anderson, *Human Rights Approaches to Environmental Protection*, Oxford 1996; see also K. Vasak, *Le Droit International de Droits de l'Homme*, 1972 and B. Castro, *Los Derechos Económicos, Sociales y Culturales*, Universidad de León 1993.

³ See "Le droit de l'homme à l'environnement en droit constitutionnel comparé", *Revue juridique de l'environnement* 1994, 313 et seq., where constitutional protection of the environment is analysed in diverse countries. Also P. Sands *Principles of International Environmental Law*, Manchester, 1995, and S. Deimann and B. Dyssli (eds), *Environmental Rights*, London, 1995.

⁴ See R. Romi, "Les problèmes d'effectivité du droit international: Le rôle des entités locales" in M. Prieur and S. Double-Billé (eds), *Droit de l'environnement et développement durable*, Limoges 1994, pp. 53 et seq.

⁵ See D. Loperena, *Los principios del derecho ambiental*, Madrid 1998, pp. 51 et seq.

⁶ See D. Shelton & A. Kiss, *International Environmental Law*, 2nd edition, New York, London 2000, p. 25.

⁷ Idea already stated by D. Loperena, "El derecho al medio ambiente adecuado", Madrid 1996, pp. 41 et seq.

⁸ G. Teubner (ed.), *Global Law without a State*, Dartmouth 1997; Y. Dezelay & B. Garth, *Dealing in Virtue: International Commercial Arbitration and the Construction of a Transnational Legal Order*, Chicago 1998.

⁹ D. Loperena, *supra* note 7.

¹⁰ Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, *International Legal Materials* 38 (1999), p. 517. (Ed. Note: Please note that since this article was submitted, the Aarhus Convention has come into force on 30 October 2001.)

¹¹ See the empirical study by E. Brown Weiss & H. Jacobsen (eds), *Engaging Countries: Strengthening Compliance with International Environmental Accords*, Cambridge, London 1998; summary of the research results also in E. Brown Weiss, "Strengthening Compliance with International Environmental Accords", *Environmental Policy and Law* 27 (1997), 297.

¹² A. Rest, "Need for an International Court for the Environment?", *Environmental Policy and Law* 24 (1994), 173, at 174 et seq.

¹³ Dutch Hoge Raad, judgment of 23 September 1988, Nederlandse Jurisprudentie 1989 No. 743, confirming Court of Appeal's Gravenhage, judgment of 10 September 1986, *Tijdschrift Milieu Aansprakelijkheid* 1987, 15, and District Court Rotterdam, judgment of 16 December 1983, Nederlandse Jurisprudentie 1984 No. 341.

¹⁴ A. Rest, *supra* note 12.

¹⁵ E.g. German Federal Administrative Court, judgment of 17 December 1986, *Entscheidungen des Bundesverwaltungsgerichts*, vol. 75, p. 285 (nuclear power plant Lingen); French Conseil d'Etat, judgment of 18 April 1986, *Recueil des décisions du Conseil d'Etat* p. 115, confirming Administrative Court Strasbourg, judgment of 27 July 1983, summary in *Environmental Policy and Law* 14 (1984), 43 (salination of the Rhine).

¹⁶ A. REST, *supra* note 12; id., "An International Court for the Environment: The Role of the Permanent Court of Arbitration", *Asia Pacific Journal of Environmental Law* 4 (1999), 107, at 109-110.

¹⁷ In particular the French and the Dutch decisions on the salination of the Rhine, *supra* notes 15 and 13.

¹⁸ United Nations Convention on the Law of the Sea of 1982, *International Legal Materials* 21 (1982), 1261, article 20 (2); see T. Treves, "The Law of the Sea Tribunal: Its Status and Scope of Jurisdiction after November 16, 1994", *Zeitschrift für Ausländisches Öffentliches Recht und Völkerrecht* 55 (1995), 421, at 428.

¹⁹ European Court of Justice, judgment of 2 April 1998, case C-321/95, *Greenpeace v. Commission*, ECR 1998 I, 1651, at 1715-16, confirming European Court, decision of 9 August 1995, case T-585/93, ECR 1995 II, 2205, at 2228 et seq.; cf. L. Krämer, "Public Interest Litigation in Environmental Matters Before European Courts", *Journal of Environmental Law* 8 (1996), 1; R. Macrory, "Environmental Citizenship and the Law: Repairing the European Road", *Journal of Environmental Law* 8 (1996), 219; P. Sands, "Access to Environmental Justice in the European Community: Principles, Practice and Proposals", *Review of Community and International Environmental Law* 3 (1994), 206.

²⁰ López Ostra v. Spain, judgement of 9 December 1994, ECHR 1994, Series A, vol. 303/C; María Guerra and others v. Italy, judgement of 19 February 1998, ECHR 1998 I, 210; cf. A. Rest, "Improved Environmental Protection Through an Expanded Concept of Human Rights", *Environmental Policy and Law* 27 (1997), 213; R. Desgagné, "Integrating Environmental Values into the European Convention on Human Rights", *American Journal of International Law* 89 (1995), 263; A. Boyle, "The Role of International Human Rights Law in Protection of the Environment", in A. Boyle & M. Anderson (eds), *Human Rights Approaches to Environ-*

mental Protection, Oxford 1996, p. 43; G. Handl, "Human Rights and the Protection of the Environment", in A. Eide, C. Krause & A. Rosas (eds), *Economic, Social and Cultural Rights*, Dordrecht 2001, p. 303; regarding older cases see A. Kley-Struller, "Der Schutz der Umwelt durch die Europäische Menschenrechtskonvention", *Europäische Grundrechte-Zeitschrift* 22 (1995), 507.

²¹ This is suggested by other cases related to noise decided by the ECHR such as Powell and Rayner v. UK, judgment of 21 February 1990, ECHR 1990, Series A, vol. 172/A; Balmer-Schafroth and others v. Switzerland, judgment of 26 August 1997, ECHR 1997 IV, 1347 (at No. 40). However, in a judgment of 2 October 2001 on night flights at Heathrow Airport (No. 36022/97 see *Frankfurter Allgemeine Zeitung*, 4 October 2001, p. 21) the Court seems to have taken a stance more favourable to victims. The question whether, insofar as national law confers upon the individual environment rights, this person has a right to judicial review by virtue of article 6 of the Convention is still largely open; see Zander v. Sweden, judgment of 25 October 1993, ECHR 1993, Series A, vol. 279/B; Balmer-Schafroth and others v. Switzerland, *supra*.

²² The Protocol to this Convention of 1988, which in its article 11 (1) establishes a right to a healthy environment, is not yet in force.

²³ A. Postiglione, "The Global Village Without Regulations", Florence 1992; id., "Giustizia e ambiente globale: Necessità di una corte internazionale", Milano 2001; see id. (ed.), "Tribunale Internazionale dell'Ambiente", Rome 1992 (containing numerous contributions); A. Rest, "An International Court for the Environment: The Role of the Permanent Court of Arbitration", *Asia Pacific Journal of Environmental Law* 4 (1999), 107, at 117 with further references.

²⁴ E. Hey, "Reflections on an International Environmental Court", The Hague 2000. Rare examples of such an integrative approach are presented by the decisions of the French administrative courts and the Dutch civil courts in the Rhine salinisation case; see *supra* notes 13 and 15. See also The Netherlands Committee for IUCN, "Strengthening Environmental Dispute Resolution: The Role of NGOs and the Feasibility of an International Environmental Court", Amsterdam 2001, where it is proposed to first explore existing mechanisms of dispute resolution, various alternatives to an International Court of the Environment as well as the types of disputes for which the bilateral systems of international dispute settlement might prove to be problematic.

²⁵ L. Kurukulasuriya, "Role of Judiciary in Promoting Sustainable Development", *Environmental Policy and Law* 28 (1998), 27, at 28; to the same extent A. Postiglione, "Global village" *supra* note 23, at pp. 53 et seq.

²⁶ See, e.g. P. Sands, "Principles of International Environmental Law", vol. I, Manchester 1994; D. Freestone & E. Hey, "The Precautionary Principle and International Law", The Hague 1996; L. Krämer, "European Community Treaty and Environmental Law", 2nd ed. London 1995; D. Loperena, "Los principios del derecho ambiental", Madrid 1998; D. Hunter, J. Salzman & D. Zaelke, "International Environmental Law", New York 1998, at pp. 98 et seq.

²⁷ See, e.g., P. Szell, "Compliance Regimes for Multilateral Environmental Agreements: A Progress Report", *Environmental Policy and Law* 27 (1997), 304; M. Bowman, "The Effectiveness of International Environmental Agreements", in: H.

T. Anker & E. M. Basse, "Land Use and Nature Protection", Copenhagen 2000, p. 105, at 122 et seq.; C. Romano, "The Peaceful Settlement of International Environmental Disputes", The Hague 2000.

²⁸ A. Postiglione, "Global Village" *supra* note 23, at p. 20; id., "Giustizia", *supra* note 23, at pp. 73 et seq.; A. Rest, "The Indispensability of an International Environmental Court", *Review of European Community and International Environmental Law* 7 (1998), 63, at 64.

²⁹ Dr Ramón Ojeda and Dr Demetrio Loperena respectively.

³⁰ Michael Bothe, Germany. Raúl Brañes, Mexico. Luis Caeiro Pitta, Portugal. Jorge Caillaux, Peru. Guillermo Cano, Argentina. Vassili Costopoulos, Greece. Ricardo Cronembold, Bolivia. Deirdre Exell Pirro, Australia. Maryse Grandbois, Canada. Freddy Luis Heinrich Balcázar, Bolivia. Alexander Kiss, France. Oleg Kolbasov, Russia. Paulo Affonso Leme Machado, Brazil. Demetrio Loperena Rota, Spain. Zdenek Madar, Czech Republic. Mateo Magariños, Uruguay. Susan Mandiberg, USA. Ramón Martín Mateo, Spain. Ramón Ojeda Mestre, Mexico. Miguel Patiño Posse, Colombia. Eduardo Pigretti, Argentina. Zygmunt Plater, USA. Amedeo Postiglione, Italy. Michel Prieur, France. Rita Raum-Degrève, Luxembourg. Eckard Reh binder, Germany. Mary Sancy, Belgium. Dinah Shelton, USA. Rafael Valenzuela, Chile. Andrew Waite, United Kingdom. Luis Ricardo Zeledón, Costa Rica.

³¹ In application of article 6 of the European Convention on Human Rights.

³² Partido Revolucionario Institucional de Mexico.

³³ The full text is available at <http://iceac.sarenet.es>.

³⁴ All the information about the Court, Statutes, Members and the texts of the resolved cases is available at <http://iceac.sarenet.es>.

³⁵ See <http://www.pca-cpa.org/>.

³⁶ See A. Rest, "An International Court for the Environment: The Role of the Permanent Court of Arbitration", *Asia Pacific Journal of Environmental Law*, 4 (1999), 107, at 117 et seq. with further references; see also P. H. Jonkman, "Resolution of International Environmental Conflicts: A Potential Role of the Permanent Court of Arbitration", in G. Cordini & A. Postiglione (eds), "Towards the World Governing of the Environment", Pavia 1996, p. 435.

³⁷ PCA, Basic Documents, Conventions, Rules, Model Clauses and Guidelines, The Hague 1998.

³⁸ *Supra* note 37.

³⁹ *International Legal Materials* 19 (1980), p. 15, Art. XIII.

⁴⁰ The IUCN Draft International Covenant on Environment and Development, Environmental Policy and Law Paper No. 31, IUCN, Gland/Cambridge 1995. Art. 62 (2) proposes mandatory adjudication or arbitration at the request of one party after a grace period for dispute settlement has lapsed; it specifically mentions the PCA as an example of an appropriate arbitral tribunal without excluding other bodies.

⁴¹ One should also mention the plan to establish an International Ombudsman Centre for Environment and Development; see M. Buenker, 2nd World Conservation Congress, *Environmental Policy and Law* No. 30 (2000), 279, at 284.

