The Role of International Courts in Environmental Law

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Presentation to the Training Program in Judicial Specialization for Protection of Environmental Rights
Supreme Court of Justice of the United Mexican States

25 September 2012
Founded in 1989

- Strengthen international law and institutions
- Protect the environment
- Promote human rights
- Ensure a just and sustainable society

Defending the Right to a Healthy Planet
Two Questions:

• What is an International Court?

• What is Environmental Law

• Answers are largely a matter of context and perspective

• Simplest answers are rarely the most useful
What is an International Court? ...

- Judicial and Quasi Judicial International bodies....
  - International Court of Justice
  - Intl Arbitration Mechanisms (PCIA)
  - Tribunals established by Treaty (ITLOS, Trade Panels)
  - International Criminal Courts
  - Human Rights Courts
  - Accountability Mechs within International Institutions (World Bank, IFC, RDBs, CDM)
  - Implementing and compliance bodies within treaties (CITES Standing Committee, Montreal Protocol Compliance mechanism)

- Important, but not covered here
  Domestic courts applying international and foreign law
What is an International Court? Presentment...

- Request for Opinion (No Dispute)
- State to State
- Individual-to-State
  - Individual seeking redress via intl mech
- Individual-to-IGO
- Intl Community to Individual (International criminal cases)

- *International Private Law*
  - Individual-to-Individual (e.g. Commercial arbitrations)

- *Domestic courts applying international or foreign law*
  - State to Individual or Goods (Seizures or prosecutions)
  - Individual-to-State (Transboundary litigation in domestic courts)
What is Environmental Law?

- Transboundary Pollution
- Global Envtl Threats
- Shared resources
- Human Rights
- Trade
Unique Challenges of State to State Mechanisms

Finding a proper forum
Getting access to the forum
Jurisdiction
Political and economic challenges States face in challenging other States.
Compliance
Individual v. State

- No political constraint in initiating the case;
- Challenge is in finding a court that would accept the case and obtaining a binding judgment.
- But an even nonbinding opinion can still be useful.
Three Early Cases

- **Trail Smelter**
  - The “No Harm” Rule
- **Lac Lanoux**
  - Shared watercourses
  - Consider interests of other states
- **Icelandic Fisheries**
  - New limits for “freedom of the seas” in an era of limited and exhaustible resources
International Court of Justice (ICJ)

- 15 Judges/15 countries
- Up to 2 addl judges from each Party.
- Disputes between States
  - Permissive jurisdiction
  - Compulsory jurisdiction
- Advisory Opinions
- Effect of Decisions
  - Binding on Parties to the Dispute
  - Not binding on non-Parties (no principle of stare decisis)
  - Authoritative statement of international law
  - Often instrumental in crystallizing emerging norms
ICJ: Nuclear Weapons Cases

- Australia v. France, & New Zealand v. France
- Advisory Opinion on the threat of nuclear weapons
- Compelling cases for the value of good *dicta*
ICJ: Gabčíkovo/Nagymaros

• Hungary v. Slovakia
ICJ: Pulp Mills

- Argentina v. Uruguay
ICJ: Palau

• Initiative for UNGA Resolution requesting Adv Op from ICJ
• Responsibility of States with respect to GHG emissions that cause harm in other States
International Tribunal on the Law of the Sea

- Jurisdiction
- Southern Bluefin Tuna
- Nauru Advisory Opinion
Treaty Mechanisms

- Example: United Nations Framework Convention on Climate Change (UNFCCC)
- Article 14
  - Any party can invoke
  - Applies to disputes over ‘interpretation or application’
  - Obligation to seek a settlement via negotiation or other means
  - After 12 months, any party can request conciliation
  - Conciliation commission comprised of appointees from 2 sides, plus jointly selected chair
  - Conciliation Panel to render recommendatory award
Trade: State-to-State

- Shrimp/Turtle
Trade: Individual/Corporation-to-State

- Methanex
- Metalclad
- Pacific Rim (ongoing)
Human Rights Bodies

• IACHR
  – Awas Tingni
  – Individual petition
  – Precautionary Measures
    • Gold Corp (Guatemala)

• ECHR
  – Affaire Tătar c. Roumanie
  – TaĞkı̂n and Others v. Turkey
  – Okyay and Others v. Turkey
Conclusion

Thank you