
SUMMARY OF PLENARY SESSION #7: THE EVOLVING ROLE OF THE JUDICIARY IN ENVIRONMENTAL COMPLIANCE AND ENFORCEMENT

Moderator: Manuel Rodriguez Becerra
Rapporteur: James Lofton

1 INTRODUCTION

Members of the judiciary present their views on the role of the judiciary in deciding environmental disputes. Consideration was given to existing and innovative methods used to quantify environmental damages.

2 PRESENTATIONS

Mr. Rodriguez opened the panel by noting the increasing role of the judiciary in Latin America and South America. He noted that in Columbia, judges are now playing a major role in environmental enforcement and compliance as a result of Columbia's new constitution in 1991 and new environmental law in 1993. Also, in Brazil, Chile, Mexico, and Argentina, the judiciary is playing an increasingly important role in environmental enforcement and compliance. Mr. Rodriguez posed the questions: Why are some countries doing better in promoting environmental compliance and enforcement through judiciaries than others? What are the enabling conditions for the judiciary to play a major role in environmental enforcement?

Mr. Anderson posed the following questions: Are there any special roles for judges, and if so, what is the nature of that role in environmental enforcement? And how do we define the judiciary? In the common law system, there is an independent judiciary protected by the state's constitution. In the exercise of judicial discretion, there is the perception that judges lack enthusiasm for environmental laws for several reasons. For example, judges believe that environmental crimes are morally

ambiguous and they are reticent to stigmatize environmental violators as criminals. This traditional conservatism of common law judges must be overcome in order to realize more success in environmental cases with the judiciary. Regarding the participation by civil society, access to courts has traditionally been a limiting factor. However, there have been significant legislative developments in expanding the role of courts. The second major development is the effort to sensitize judges to the significance of environmental cases. This has been accomplished through mechanisms such as the UNEP judicial symposia. Finally, there has been innovative legislation in creating non-traditional environmental tribunals that seem to have great potential.

Judge Decleris asked us whether we shall continue on the road to a sustainable society or whether we will revert to "the good old days" before the Rio Summit. Is a sustainable society an attainable vision? If it is, guidance and creativity is needed to attain a sustainable society. The judiciary will be essential to providing this guidance and creativity for three reasons:

- governments which are supposed to protect the environment actually are the source of conflicting policies;
- the judiciary succeeds better than government in reconciling conflicting policies; and
- common law was created by judges, so it is reasonable to expect that judges can create common law principles of sustainable development.

Judge Decleris listed the 12 fundamentals of sustainable development, and closed by stating that, if properly trained,

can succeed in achieving the principles of sustainable development.

Mr. Kurukulasuriya began by explaining that the UNEP program of environmental law is structured on a ten-year basis. Now, in its third ten-year program, the UNEP focus in environmental law has shifted in focus at the global, regional and national levels. The two major activities are in promoting the development of guidelines on environmental compliance and enforcement and second in strengthening the judiciary. Mr. Kurukulasuriya emphasized that the role of the judiciary includes promoting the rule of law including national environmental governance and promoting compliance and enforcement of environmental regulations. The UNEP has focused its efforts in strengthening the judiciary through six regional judicial symposia since 1996. These regional symposia have been successful in fostering judicial dialogue and exchange of experiences in the field of environmental law, establishing the basis for networking among the judiciary, the legal professional and academics, and promoting more vigorous and effective application of environmental law as an instrument for translating sustainable development policies into action.

3 DISCUSSION

George Kremlis from the European Commission stated that the EC will support the concept of judicial symposia and will support a judicial network to improve cooperation and exchange of experiences in the environmental arena. He said the European Court of Justice has become more environmentally aware. Training sessions for judges have been piloted at the European Court of Justice and there is discussion of creating an environmental chamber in the European Court of Justice by treaty amendment.

Questions: What are the enabling conditions for promoting sustainable devel-

opment through the role of the judiciary? What role can INECE play in this area? There has been progressive development in the rule of law. However, there has been little development in procedure. Are we addressing procedural problems in environmental law?

Responses: INECE can play a role in helping to formulate a more systematic approach in addressing the role of the judiciary in promoting environmental compliance and enforcement. INECE can also promote an expanded basis for standing for civil society groups and assist in promoting judicial awareness of the need for strong enforcement of environmental cases.

Judges have often used procedural issues to avoid making decisions in cases, including environmental matters. As with the concept of standing, procedural limitations should be addressed so courts are more accessible and more decisions on the merits are rendered in environmental cases.

4 CONCLUSION

The Assumption of a more proactive stance towards environmental protection can be accommodated within existing legislative and judicial frameworks. The judiciary can, and must, play a leading role in promoting compliance and enforcement of environmental regulations. INECE should cooperate with UNEP to build judicial capacity in this regard.