The Role of International Courts in Environmental Law

Carroll Muffett
Center for International Environmental Law

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

CIEL

CIEL®

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

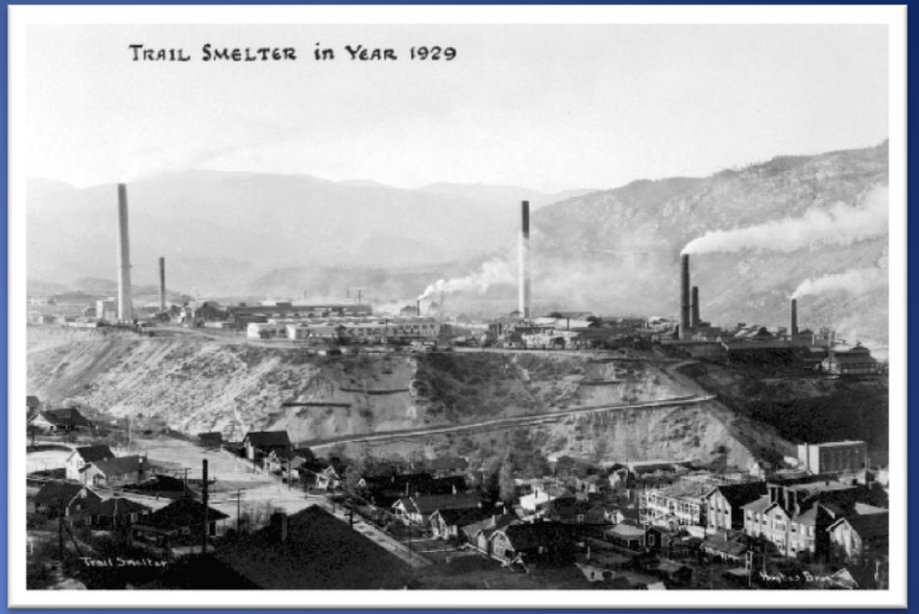
Finding a proper forum
Getting access to the forum
Jurisdiction
Political and economic challenges States face in challenging other States.
Compliance

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 a 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 a 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: Gabcikovo/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

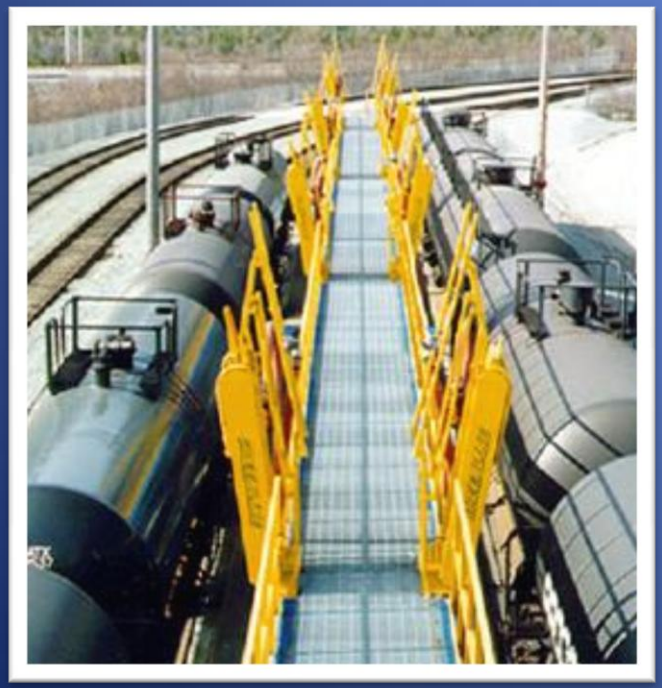
- Example: United Nations Framework Convention on Climate Change (UNFCCC)
- Article 14
  - Any party can invoke
  - Applies to disputes over ‘interpretation or application’
  - Obligation to seek a settlement via negotiation or other means
  - After 12 months, any party can request conciliation
  - Conciliation 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
  - TaĜkın and Others v. Turkey
  - Okyay and Others v. Turkey

Conclusion