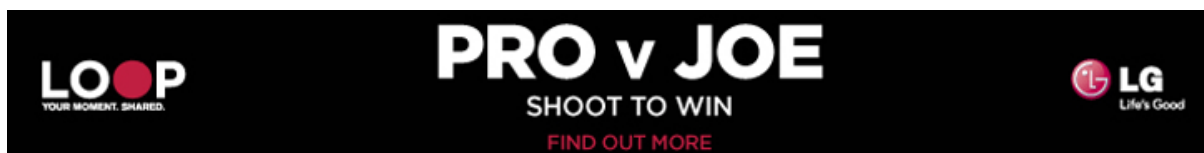


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In search of world justice

The burden of climate change solutions can only be equitably shared via an international court

Stephen Hockman

The Guardian, Tuesday August 19 2008

"It is a trite observation that environmental problems, although they closely affect municipal laws, are essentially international; and that the main structure of control can therefore be no other than that of international law." Thus wrote Robert Jennings QC, a former president of the international court of justice, in his foreword to the first edition of Philippe Sands's *Principles of International Environmental Law*, published in 1995 - years before the potential effects of climate change had transformed public perceptions. Yet even today, after all the millions of words that have been written on the subject of climate change, we seem no closer to establishing that "structure of control". Indeed, Jennings's observation that the problem is mainly to be solved by legal means might now seem not so much trite as unorthodox, bold or even eccentric.

The potential effects of climate change and the urgency of efforts to tackle it have been given a new focus by recent developments, including reports by the Intergovernmental Panel on Climate Change and Nicholas Stern on behalf of the UK government. Although few deny the necessity of finding solutions, even fewer have any to hand. International summit statements only confirm the diplomatic efforts involved in attaining any kind of consensus.

The understandable reluctance of developing countries to sign up to carbon commitments - unless the developed world is prepared to make an equitable contribution - calls for more radical options. Those options must be realised at state, regional and international levels, and they will require political, economic and legal solutions.

In this mix, international legal instruments are crucial. The existing tools lack the necessary jurisdiction, clout and transparency. The time is ripe for a serious consideration of an international court for the environment. Such a court was mooted in Washington in 1999, but sank without trace. Today, however, we cannot afford to drop the ball.

Ideally, such a court would be compulsory and would include a convention on the right to a healthy environment and deliver transparency in access to data and in its proceedings. It would include a scientific body to assess technical issues and a mechanism to avoid "forum shopping" - that is, litigants taking their pick of the most propitious

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court available.

Of course, regulations and sanctions alone cannot deliver a global solution to problems of climate change, but without such components the incentive for individual countries to address those problems - and to achieve solutions that are politically acceptable within their own jurisdictions - will be much reduced.

As far as the business community is concerned, an international court for the environment would offer a centralised system accessible to a range of actors, an enhanced body of law regarding environmental issues, and consistency in judicial resolution of environmental disputes. Such a court would also bring an increased focus on preventative measures, a set of global standards of care, and the facilitation and enforcement of environmental treaties. In addition, it could persuade the world business community to develop risk-management systems and improve present practices, thereby reducing the likelihood of environmental catastrophe.

Only an impartial adjudicating body is capable of providing the catalyst for a global consensus as to the fairest way to distribute the burdens that accompany solutions to the climate change problem. Whatever difficulties may lie in the path of such solutions, the benefits will be greater.

· Stephen Hockman QC is a former chairman of the Bar Council; a symposium on an international court of the environment is to be held in London in November
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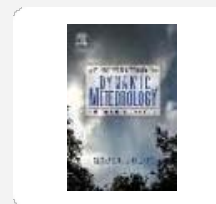
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