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## The Importance of the Judiciary in Environmental Compliance and Enforcement

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## COMMENT

### The Importance of the Judiciary in Environmental Compliance and Enforcement

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#### I. INTRODUCTION

For more than forty years, countries around the world have made concerted efforts through the development and adoption of laws and policies to govern activities and interactions that harm our environment, pose a serious risk to public health, threaten biodiversity, devalue ecosystem goods and services, and deplete natural resources. Countries have created robust environmental

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agencies, negotiated multilateral agreements and undertaken new initiatives at the local, national, and international levels to protect human health, limit greenhouse gas emissions, conserve biodiversity and wildlife, and manage natural resources. These achievements are significant, but recent global environmental assessments acknowledge that growing challenges remain critical. In addition to “bad actor” and criminal elements, the lack of political will, resources, and environmental management contribute to the continued loss of biodiversity, reduction in natural resources, climate degradation, and the worldwide proliferation of waste.

Central to closing the gap between policy goals and environmental protection are the people and institutions charged with assuring compliance with environmental laws and enforcing them effectively. In order to apply legal rules to circumstances that are complex and frequently entangled with the competing interests of different stakeholders, judges, attorneys-generals, and prosecutors need clear and enforceable laws, specialized training, reliable information, public confidence, and political will. Multidisciplinary approaches to capacity building for parliamentarians, inspectors, prosecutors, and judges are central to success.

Robust national environmental compliance and enforcement systems for environmental and energy laws are critical parts of an effective overall governance strategy to achieve a green economy, poverty eradication, and sustainable development objectives. Well-designed environmental laws and regulations, which include implementation and enforcement systems, advance sustainable development objectives by improving the health and safety of the workforce and communities, conserve natural resources and ecosystem services, promote sustainability in the business community, expand markets for environmental goods and services, create sustainable jobs, drive technology innovation, and by leveling the playing field for investment by reducing costs.

The International Network for Environmental Compliance and Enforcement (INECE) is a global network working with environmental compliance and enforcement officials around the world to respond to this compliance gap. INECE and its associated regional environmental compliance and enforcement

networks develop, promote, and implement practical and innovative activities to strengthen environmental compliance and enforcement at all levels of governance. The benefits of cooperation through informal trans-governmental networks, such as INECE, are applicable not only to government regulators, but also to judges and prosecutors.

As the world approaches the twentieth anniversary of the 1992 United Nations Conference on Environment and Development (also known as the Rio Earth Summit), attention focuses on developing new frameworks for environmental governance that permit continued improvements in quality of life while preventing further degradation of our environment and natural resources. An indispensable component of these frameworks will be mechanisms to assure the consistent enforcement of environmental laws at the national level, including domestic laws to implement multilateral environmental agreements. In a number of remarkable ways, the judiciary is positioned in the vanguard of change – pioneering “green” courts, helping to empower a broader group of stakeholders to participate in the process of achieving environmental justice, and using informal networks to collaborate and exchange information with counterparts around the world.

In this contribution, we explore the central role that the judiciary plays in enforcing environmental law and in promoting sustainable development. This article reviews the international mandates for enforcement and compliance cooperation, describes ways in which the judiciary participates in realizing a sustainable future, focuses on environmental tribunals, and evaluates channels for the judiciary to cooperate at a global level through trans-governmental networks.

## **II. POLICY FRAMEWORK FOR INTERNATIONAL ENFORCEMENT AND COMPLIANCE COOPERATION**

Sustainable development depends upon good governance; good governance depends upon the rule of law; and the rule of law depends upon effective compliance and enforcement.



Figure 1: The Environmental Compliance and Enforcement Pyramid<sup>1</sup>

Institutions that are open, participatory, accountable, predictable, and transparent are characteristic of good governance. The rule of law supports these characteristics by ensuring that rules are applied consistently, efficiently and fairly by independent institutions to all, including those who govern.<sup>2</sup>

Agenda 21, developed during the 1992 Rio Earth Summit held in Rio de Janeiro, Brazil,<sup>3</sup> established an international mandate to build enforcement capacity as an essential element of environmental management and sustainable development. It also codified the idea that compliance and enforcement activities serve as the foundation for sustainable development by supporting the rule of law and good governance.

The environmental leaders of the United States, Canada, Italy, France, Germany, Japan, Russia, the United Kingdom, and the European Union convened in Miami, Florida, in 1997 and

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1. INT'L NETWORK FOR ENVTL. COMPLIANCE AND ENFORCEMENT, INECE SPECIAL REPORT ON CLIMATE COMPLIANCE 16 (Dec. 2009), *available at* <http://inece.org/climate/SpecialReportClimateCompliance.pdf>.

2. Durwood Zaelke, Matthew Stilwell, & Oran Young, *What Reason Demands: Making Law Work for Sustainable Development*, in MAKING LAW WORK: ENVIRONMENTAL COMPLIANCE & SUSTAINABLE DEVELOPMENT (2005), *available at* [http://www.inece.org/mlw/Chapter1\\_ZaelkeStilwellYoung.pdf](http://www.inece.org/mlw/Chapter1_ZaelkeStilwellYoung.pdf).

3. See United Nations Conference on Environment and Development, Rio de Janeiro, Braz., June 3-14, 1992, *Rio Declaration on Environment and Development*, U.N. Doc. A/CONF.151/26/Rev.1 (Vol. 1), Annex I (Aug. 12, 1992).

addressed environmental enforcement issues for the first time in the context of the G-8 Summit process.<sup>4</sup> At the conclusion of the Summit, the leaders issued a joint statement, declaring that “[e]ffective enforcement of environmental law is essential to punish and deter environmental violations, ensure fairness for those who pay the costs associated with environmental compliance, and provide a basis and give incentives for voluntary efforts to improve environmental performance.”<sup>5</sup>

The G-8 leaders agreed to move forward domestically with efforts to improve the integration of environmental enforcement with traditional law enforcement institutions and other agencies. They agreed to enhance a collective focus on trade in hazardous materials, e-waste, and endangered wildlife, which is illegal under international environmental law, including shipments originating in their countries and those that have adverse impacts on developing countries.

### III. INVOLVEMENT OF THE JUDICIARY IN ENVIRONMENTAL PROTECTION

#### A. Background

Looking at national and international regulations, laws and agreements, the regulated communities that are important for realizing the goals of these national and international regulations and agreements can generally be divided into three categories: (1) those who will not comply unless they are forced to; (2) those who are “impressionable,” and might comply if presented with

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4. Chairs Summary, Environment Leaders' Summit of the Eight, Miami, FL., May 5-6, 1997, *available at* <http://www.g8.utoronto.ca/environment/1997miami/summary.html>. *See also* Earl E. Deveany & Michael J. Penders, *The G-8 Mandate for Expanded Cooperation to Combat International Environmental Crime, Recent Developments in the United States, and a Case Study: Project Exodus Asia*, in FIFTH INTERNATIONAL CONFERENCE ON ENVIRONMENTAL COMPLIANCE AND ENFORCEMENT 337 (1999), *available at* [www.inece.org/5thvol1/devaneypenders.pdf](http://www.inece.org/5thvol1/devaneypenders.pdf).

5. *Id.* at 338.

incentives, knowledge, or capacity to do so; and (3) those who will comply in all circumstances.<sup>6</sup>

As the American statesman and politician Chester Bowles put it:

. . . [f]rom this experience I learned a valuable lesson in government: a very small percentage of the public – perhaps 2 or 3 percent – are inherently dishonest; while something like 20 percent can be trusted to obey the law regardless of what others do. The remaining 75 percent or so genuinely want to be honest, but they are also determined not to confirm P.T. Barnum’s assertion that ‘a sucker is born every minute’; breaking a law or two is a small price to pay to escape the unpleasant sense of being had.<sup>7</sup>

Described another way by H.L.A. Hart, “[W]hat reason demands is *voluntary* cooperation in a *coercive* system.”<sup>8</sup> This information is applicable at a national level, but on an international level the figures and ideas have the same meaning.

The judiciary fills a vital role of providing coercion while providing an incentive for compliance. It is also essential in providing the guidance and creativity needed for sustainable development, which, as previously described, flows from effective compliance and enforcement.

There are a number of concrete ways in which the judiciary can participate in realizing a sustainable future, such as: balancing environmental and developmental considerations in judicial decision-making; providing an impetus to the incorporation of contemporary developments in the field of environmental law for promoting sustainable development, including access to justice, right to information and public participation; promoting the implementation of global and regional environmental conventions; and strengthening the hand

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6. INT’L NETWORK FOR ENVTL. COMPLIANCE & ENFORCEMENT, PRINCIPLES OF ENVIRONMENTAL COMPLIANCE AND ENFORCEMENT HANDBOOK 8-9 (2009), available at [http://inece.org/principles/PrinciplesHandbook\\_23sept09.pdf](http://inece.org/principles/PrinciplesHandbook_23sept09.pdf).

7. See CHESTER BOWLES, PROMISES TO KEEP: MY YEARS IN PUBLIC LIFE 1941-1969 (1971) (emphasis added). See also Ray Purdy, *Using Earth Observation Technologies for Better Regulatory Compliance and Enforcement of Environmental Laws*, 22 J. OF ENVTL. L. 59, 79 (2010).

8. H.L.A. HART, THE CONCEPT OF LAW 198 (2nd ed. 1994).

of the executive in enforcing environmental regulations, in the face of often outside and improper influences that could stifle executive action. The judiciary can, and must, play a leading role in promoting compliance and enforcement of environmental regulations.

A judiciary well informed of the rapidly expanding boundaries of environmental law and law in the field of sustainable development, and sensitive to their role and responsibilities in promoting the rule of law in regard to environmentally friendly development, would play a critical role in the vindication of the public interest in a healthy and secure environment through the interpretation, enhancement and enforcement of environmental law.<sup>9</sup>

However, staying abreast of the complex and rapidly changing environmental issues can be difficult for individual judges. Further confounding the work of judicial bodies, most environmental harms involve complex science and – especially those brought about by climate change – do not conform to jurisdictional boundaries. This requires judicial bodies to coordinate and collaborate in ways to which judges may be unaccustomed or uncomfortable.<sup>10</sup>

As stated in the United Nations Environment Programme (UNEP) GEO-4 Report, the environmental “issues [brought about by climate change] transcend borders. Protecting the global environment is largely beyond the capacity of individual countries. Only concerted and coordinated international action will be sufficient. The world needs a more coherent system of international environmental governance.”<sup>11</sup>

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9. Global Judges Symposium on Sustainable Development and the Role of Law, Aug. 18-20, 2002, *UNEP Executive Director's Background Paper to the Global Judges Symposium* (2002), [http://www.unep.org/law/Symposium/Pre\\_session.htm](http://www.unep.org/law/Symposium/Pre_session.htm).

10. See INECE, *Summary of Plenary Session 7: The Evolving Role of the Judiciary in Environmental Compliance and Enforcement*, in SIXTH INTERNATIONAL CONFERENCE ON ENVIRONMENTAL COMPLIANCE AND ENFORCEMENT 1 (2002), available at <http://www.inece.org/conf/proceedings2/54-Plenary%20Session%207ALT.pdf>.

11. UNEP, *GLOBAL ENVIRONMENT OUTLOOK 4* xvi (2007), available at [http://www.unep.org/geo/GEO4/report/GEO-4\\_Report\\_Full\\_en.pdf](http://www.unep.org/geo/GEO4/report/GEO-4_Report_Full_en.pdf).



In 2002, the participants of the Global Judges Symposium on Sustainable Development and the Role of Law in Johannesburg, South Africa, organized by INECE and UNEP, concluded that:

[T]he deficiency in the knowledge, relevant skills and information in regard to environmental law is one of the principal causes that contribute to the lack of effective implementation, development and enforcement of environmental law.' . . . [T]here is an urgent need to strengthen the capacity of judges, prosecutors, legislators and all persons who play a critical role at national level in the process of implementation, development and enforcement of environmental law . . . .<sup>12</sup>

Recognizing the importance of the judiciary, INECE works with judicial bodies around the world to help develop a global judiciary, which is well-informed of the rapidly expanding boundaries of environmental law and law in the field of sustainable development, and sensitive to their role and responsibilities in promoting the rule of law in regard to an environmentally friendly and secure environment through the interpretation, enhancement, and enforcement of environmental law. INECE also supports jurists in making administrative procedure changes to better support environmental enforcement. INECE will continue to reinforce and advance this message in the Rio + 20 process this summer and beyond.

## B. Environmental Courts and Tribunals

One significant development in recent decades is the emergence of “green courts” – environmental courts and tribunals that specialize in the adjudication of environmental disputes. They allow governments to address environmental and closely related socio-economic issues that require significant specialized knowledge. Qualifications for serving as part of an environmental court and tribunal frequently require training in environmental science and other technical fields. They exist not

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12. UNEP, GLOBAL JUDGES PROGRAM viii, 16 (2005), *available at* [http://hqweb.unep.org/law/PDF/UNEP\\_Global\\_Judges\\_Prog\\_New.pdf](http://hqweb.unep.org/law/PDF/UNEP_Global_Judges_Prog_New.pdf) (describing a conclusion reached at the Global Judges Symposium on Sustainable Development and the Role of Law in Johannesburg in 2002).

only for the prosecution of environmental crimes, but civil cases as well, and often must balance environmental and economic considerations. In all countries where environmental courts and tribunals are present, their availability is highly dependent on the threshold issue of standing. Local or national laws determine the types of claims that an environmental court and tribunal is authorized to hear and dictate the eligibility criteria for access to these decision-making bodies.

A study by the Access Initiative has identified over 350 environmental courts and tribunals in forty-one countries and on every continent, including 117 created in the Philippines in 2008.<sup>13</sup> They take many forms and either consists of formal elements of the judicial branch of governments (courts) or bodies that are not part of the judicial branch, but have authority to issue binding decisions in environmental disputes (tribunals).<sup>14</sup> The Access Initiative study concluded that there is no optimal “one-size-fits-all” model for environmental courts and tribunals but that the most effective form for each country should be driven by factors that include the type of laws, legal institutions, cultural, and socio-economic conditions prevalent in each national jurisdiction.<sup>15</sup>

The diversity of environmental courts and tribunals is best illustrated by several examples. The Land and Environment Court in the state of New South Wales, Australia, is a stand-alone court that is part of the judicial branch of government. It has comprehensive authority to address issues that integrate environmental and land-planning concerns and is empowered to issue civil, administrative, and criminal rulings.<sup>16</sup> The court makes extensive use of internally selected independent experts who have scientific or technical credentials.<sup>17</sup>

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13. GEORGE PRING & CATHERINE PRING, *GREENING JUSTICE: CREATING AND IMPROVING ENVIRONMENTAL COURTS AND TRIBUNALS* v. 4 (2009), *available at* [http://www.accessinitiative.org/sites/default/files/Greening%20Justice%20Final\\_31399\\_WRI.pdf](http://www.accessinitiative.org/sites/default/files/Greening%20Justice%20Final_31399_WRI.pdf).

14. *Id.* at 24.

15. *Id.* at 3.

16. LAND & ENV'T CT., *About Us*, [http://www.lawlink.nsw.gov.au/lawlink/lec/ll\\_lec.nsf/pages/LEC\\_aboutus](http://www.lawlink.nsw.gov.au/lawlink/lec/ll_lec.nsf/pages/LEC_aboutus) (last updated Oct. 4, 2011).

17. PRING & PRING, *supra* note 13, at 60.

In contrast, Brazil's state and federal environmental courts do not have authority to integrate land use planning issues into their decisions on criminal cases (although they have civil and administrative jurisdiction).<sup>18</sup> However, Brazilian judges have significant leeway to fashion creative remedies in environmental cases and are recognized for being relatively insulated from political pressures.<sup>19</sup> A unique fixture in environmental cases in Brazil is the office of public environmental prosecutors (*Ministério Público*), which is largely independent of the three branches of government and has substantial powers to autonomously and aggressively pursue environmental actions, work closely with NGOs, or respond to a claim filed by the public.<sup>20</sup>

Some environmental courts and tribunals have only recently been implemented. In India, the National Green Tribunal Act of 2010 authorized the development of institutional capacity for domestic environmental governance, including the implementation of a national green tribunal that is staffed by judicial and expert members for issuing rulings on environmental controversies.<sup>21</sup> The Tribunal, which became operational in summer of 2011, is expected to play a dominant role in leading the development of environmental compliance and enforcement mechanisms, but is likely to require significant capacity enhancements before it can make inroads in improving compliance with India's environmental laws. Efforts to build a green court are advanced in Kenya and in several Asian countries as well.

Despite the advantages that environmental courts and tribunals offer over non-specialized civil and criminal courts, their availability only represents a first step towards preventing and providing effective redress for environmental harms. The

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18. *Id.* at 28.

19. *Id.* at 113.

20. See generally LESLEY K. MCALLISTER, MAKING LAW MATTER: ENVIRONMENTAL PROTECTION & LEGAL INSTITUTIONS IN BRAZIL (2008).

21. Bakshi, Pradeep, Yadav & Madhur, *New Judicial Roles and Green Courts in India*, in NINTH INTERNATIONAL CONFERENCE ON ENVIRONMENTAL COMPLIANCE AND ENFORCEMENT 641, available at [http://inece.org/conference/9/proceedings/66\\_BakshiYadav.pdf](http://inece.org/conference/9/proceedings/66_BakshiYadav.pdf).

means for enforcement must be available in order to give effect to the decision of an environmental court or tribunal. This may prove difficult in practice where there is insufficient capacity on the part of government agencies, in terms of training, experience, level of staffing, or political will to implement the actions necessary to accomplish this. In many countries, judges and prosecutors will require additional training and resources in order to consistently fashion decisions that can be enforced. The engagement of senior judges, prosecutors, and attorney generals in international networks has proven to be one highly effective tool for enhancing their abilities to shape the ultimate outcome in environmental disputes.

#### IV. THE ROLE OF INTERNATIONAL NETWORKS IN FACILITATING COOPERATION AMONG THE JUDICIARY

Cooperation among governmental officials dedicated to strengthening environmental governance has numerous benefits for achieving common goals. Cooperation, whether through formal structures or through informal networks, can help resolve and prevent trans-boundary environmental problems, create efficiencies in the development of tools and programs, and help create a level playing field for regulated industries.<sup>22</sup>

In the example of INECE, its work over the past twenty years in fostering collaboration among officials has resulted in informal relationships that have provided a number of advantages. These include the ability to address trans-boundary environmental crime,<sup>23</sup> the increased recognition of the relationship between environmental enforcement and sustainable

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22. INECE, *Whistler Statement*, in NINTH INTERNATIONAL CONFERENCE ON ENVIRONMENTAL COMPLIANCE AND ENFORCEMENT 4 (2011), *available at* [http://inece.org/conference/9/proceedings/04\\_WhistlerStatement.pdf](http://inece.org/conference/9/proceedings/04_WhistlerStatement.pdf).

23. INECE's work has led to the launch of regional environmental compliance and enforcement networks including in Europe, the European Accession countries, Eastern Europe, the Caucasus and central Asia region, Australasia, Asia, East Africa, the Arab region, North Africa, North America, and Central America (CCAD). INECE also has supported topic-specific networks on a number of issues including carbon market integrity, seaports security, and strengthening capacity of environmental prosecutors.

development,<sup>24</sup> and the collaborative development of new tools for strengthening institutions to assure compliance.<sup>25</sup>

These same principles apply to collaboration among members of the judiciary, whether at a national or international level, which can aid in the transmission of advances in environmental sciences and provide a forum for members of the judiciary to exchange information on environmental law relevant to their decision making. As the United Nations Environment Programme recognizes, “[b]ecause environmental violations very often have transboundary aspects, however, judicial proceedings addressing such violations will also have international aspects and will benefit from cooperation between the relevant judges.”<sup>26</sup>

Global judicial networking can promote the exchange of ideas between court systems, enable informal peer-level oversight, and encourage and empower members of the judiciary who are engaged in environmental decision-making. Anne-Marie

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24. Awareness raising materials developed by the INECE community include the handbook of principles of environmental compliance and enforcement; a methodology for developing national performance measures for environmental compliance programs; proceedings from nine international conferences; and training materials and trainings given on several subjects (e.g., conducting compliance inspections, assuring compliance with laws governing water resources). The INECE website is one of the most important tools and functions as a library of all INECE materials and publications as well as a medium for INECE members to share and disseminate ideas and information. INECE resources are available at INECE, <http://www.inece.org/> (last visited Mar. 25, 2012).

25. A range of instruments have been developed by INECE to strengthen the capacity of those working in the field of compliance and enforcement, such as compliance and enforcement indicators to better manage and measure the results of the activities; worldwide training with the principles of environmental compliance and enforcement course; and ensuring compliance with existing policies and measures to reduce emissions to air. INECE’s capacity-building efforts have resulted in a number of concrete enforcement successes over the years. For example, in 2010, the INECE Seaport Environmental Security Network held a coordinated global inspection in 74 locations in seaports. The inspections resulted in the detection of illegal shipments of hazardous wastes, including electronic waste. Of the 74 total targeted inspections, 53 percent discovered non-compliance with applicable rules and regulations. *See Seaports*, INECE, <http://inece.org/topics/seaports/> (last visited Mar. 25, 2012).

26. *Guideline 47, Manual on Compliance with and Enforcement of Multilateral Environmental Agreements*, UNEP, <http://www.unep.org/dec/onlineManual/Enforcement/InternationalCooperation/JudicialProceedings/tabid/101/Default.aspx> (last visited Mar. 25, 2012).

Slaughter describes the benefits of both horizontal communication (between courts of the same status) and vertical communication (between national and supranational courts), noting that:

. . . [h]orizontal judicial communication can play a further role in promoting the acceptance and effectiveness of international obligations. In a situation in which a number of states are contemplating acceptance of a particular international legal obligation, references to the activity of fellow courts in other states can act as both a security blanket and a stick.<sup>27</sup>

In the two decades since the Rio Earth Summit, members of the judiciary, including judges, prosecutors, attorney generals, and other legal professionals have been central participants in the use of international networks to share knowledge, build consensus on best practices, and develop a basis for broader cooperation in dealing with environmental cases that transcend international boundaries. Moving into the future, INECE and its global networks will continue to 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 through its networks can promote and expand the basis for standing for civil society groups and assist in promoting judicial awareness of the need for strong enforcement of environmental cases.

A meeting of the Presidents of Supreme Courts and Chief Justices, convened at the 2002 Johannesburg Summit, provided the impetus for one of the first international networks of judges dedicated to addressing environmental issues. In order to implement the resolutions adopted at that meeting, UNEP organized a series of regional conferences. An important outcome of this process involved a decision by European judges creating a permanent network in February 2004: the European Union Forum of Judges for the Environment. The Forum's mission is to promote better enforcement of national, European, and international environmental law through programs aimed at

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27. Anne-Marie Slaughter, *Human Rights International Law Symposium: Article: A Typology of Transjudicial Communication*, 29 U. RICH. L. REV. 99, 116 (1994).

strengthening judges' knowledge of environmental law, encouraging the exchange of judicial decisions, and collaborating to develop effective training in environmental law. The European Union Forum of Judges for the Environment has also taken a leading role in spreading the benefits of networking beyond Western Europe, pioneering initiatives in South Eastern Europe and Central Asia.

Although regional networks have established new channels for effective regional cooperation, many of today's environmental challenges are global in scale. On June 20, 2011, the Global Network of Environmental Prosecutors, launched (by a diverse group of prosecutors) in response to the conclusion that internationally organized crime calls for an internationally organized prosecution.<sup>28</sup> This new network is an outcome of a joint work program carried out by INECE and the IUCN. It also builds on the experience of existing networks, such as the Latin American Environmental Prosecutors Network and the European Network of Prosecutors. The network will contribute towards compliance with international and national laws aimed at protecting flora and fauna, marine and terrestrial ecosystems, and habitats.

## V. FURTHER STEPS

Initial groundwork has been laid for a new era of international cooperation between members of the judiciary. The 2011 INECE Conference at Whistler resulted in a call to action to facilitate continued collaboration among key participants, including judges, prosecutors, civil society, and the private sector to work toward strengthening mechanisms for environmental compliance and enforcement.<sup>29</sup> Some of these action items include promoting the importance of green courts in enforcing environmental law, jointly developing methods to stimulate effective cross-border information sharing mechanisms for

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28. PROCEEDINGS OF THE NINTH INTERNATIONAL CONFERENCE ON ENVIRONMENTAL COMPLIANCE AND ENFORCEMENT 2011, TRACK G: DEVELOPING EFFECTIVE ENFORCEMENT NETWORKS 127-129 (2011), *available at* [http://inece.org/conference/9/proceedings/19\\_TrackG.pdf](http://inece.org/conference/9/proceedings/19_TrackG.pdf).

29. *See generally* INECE, *Whistler Statement*, *supra* note 22.

detecting and deterring illegal operations, and better integrating and expanding the role of academia into this work.<sup>30</sup>

In June of 2012, the United Nations Conference on Sustainable Development (Rio+20) will offer members of the judiciary from around the world an opportunity to take international judicial cooperation on the environment further. In preparation for Rio+20, UNEP commenced a set of programs designed to strengthen that outcome. These include engaging senior members of the judiciary from around the world in identifying a common vision for using legal systems, the judiciary, and governance to promote sustainable development.<sup>31</sup> In a background document submitted in support of UNEP's effort, Gregory Rose highlighted that:

The judiciary has, in recent years, enhanced enforcement efforts by governments to implement environmental laws. It plays a crucial role by interpreting legislation relating to environmental issues, integrating emerging principles of law within the holistic paradigms of sustainable development, providing a coherent and comprehensive strategy for integrating diverse sectoral laws into a cross-sectoral approach and for ensuring effective implementation of legislation.<sup>32</sup>

After an initial high-level planning session in Stockholm in July, UNEP held its first preparatory meeting in Kuala Lumpur, Malaysia, on October 12 and 13, 2011. The meeting resulted in the "Kuala Lumpur Statement,"<sup>33</sup> which provides a bold list of objectives that must be attained in order to put sustainable development goals into effect. Highlighting the need for representatives of the legal community to "take a more active role

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30. *Id.*

31. See UNEP, WORLD CONGRESS ON JUSTICE, GOVERNANCE AND LAW FOR ENVIRONMENTAL SUSTAINABILITY (2012), available at: <http://www.unep.org/DELC/worldcongress/about.asp>.

32. GREGORY L. ROSE, GAPS IN THE IMPLEMENTATION OF ENVIRONMENTAL LAW AT THE NATIONAL, REGIONAL AND GLOBAL LEVEL 9 (2011), available at <http://www.unep.org/DELC/worldcongress/docs/FormatedGapsEL.pdf>.

33. See UNEP, WORLD CONGRESS ON JUSTICE, GOVERNANCE AND LAW FOR ENVIRONMENTAL SUSTAINABILITY, KUALA LUMPUR STATEMENT (2011), <http://www.unep.org/DELC/worldcongress/docs/klstatement.pdf>.



to further their contribution”<sup>34</sup> toward reaching those goals, the statement’s key objectives include strengthening recognition of the connection between social justice and environment, integrating non-governmental sectors (business and environmental NGOs), and taking steps to enhance public participation and access to justice.<sup>35</sup> A second preparatory meeting will take place in Buenos Aires, Argentina, in April of 2012.

On the eve of Rio+20, UNEP will convene the World Congress on Justice, Governance and Law for Environmental Sustainability from June 1-3, 2012, in order to build international consensus among key participants which will include attorneys-general, chief prosecutors, auditors-general (*cour des comptes*), chief justices and senior judges. The World Congress will seek to establish a roadmap for concrete future actions that will be necessary to support the pursuit of sustainable development and to secure commitment for implementing them.

## VI. CONCLUSIONS

Strengthening environmental compliance and enforcement requires the unwavering commitment of individuals and institutions everywhere. Of the many actors in the environmental compliance chain, the judiciary alone has a fundamental contribution to make in upholding the rule of law and ensuring that national and international laws are interpreted and applied fairly, efficiently, and effectively.

Perhaps the most profound aspect of judicial leadership in strengthening institutions for environmental compliance enforcement is the judiciary’s ability to influence public perception and discourse concerning environmental and social concerns. Courts have a powerful transformative effect on society. Scott Fulton and Justice Antonio Benjamin, prominent environmental judges from separate continents and cultures,

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34. *Id.* at 1.

35. See UNEP, WORLD CONGRESS ON JUSTICE, GOVERNANCE AND LAW FOR ENVIRONMENTAL SUSTAINABILITY, KUALA LUMPUR STATEMENT (2011), <http://www.unep.org/DELC/worldcongress/docs/klstatement.pdf>.

recently jointly commented that, “what judges treat as important, a society comes to judge as important.”<sup>36</sup>

Improved global collaboration between judges and prosecutors across an increasingly broad array of formal and informal networking channels has greatly increased opportunities for successful implementation of compliance and enforcement measures. Yet the success of global environmental governance depends on more than an environmentally trained and motivated judiciary. The same level of ambition that has been collectively voiced by senior judges in preparation for Rio+20 must be harnessed to translate generalized goals into concrete institutional changes, laws, and accountability mechanisms in nations around the world.

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36. Scott Fulton & Antonio Benjamin, *Foundations of Sustainability*, in NINTH INTERNATIONAL CONFERENCE ON ENVIRONMENTAL COMPLIANCE AND ENFORCEMENT 457, 462 (2011), available at [http://inece.org/conference/9/proceedings/52\\_FultonBenjamin.pdf](http://inece.org/conference/9/proceedings/52_FultonBenjamin.pdf).