

**INTERNATIONAL CENTRE FOR COMPARATIVE ENVIRONMENTAL LAW
WORLD CONFERENCE OF ENVIRONMENTAL LAW ASSOCIATIONS
THE LIMOGES DECLARATION
15th NOVEMBER 1990**

PREAMBULE

The environmental law experts of 43 States attending the World Conference of Environmental Law Associations, called by the International Centre for Environmental Law and held in Limoges from 13th to 15 November 1990 in the presence of experts of the International Council for Environmental Law and of 20 national Environmental Law Associations, declare as follows:

1°) The United Nations Conference on Environment and Development, to be held in Brazil in 1992, must emphasise the importance of effectively setting up appropriate national and international legal instruments in order to afford efficient protection of natural habitats and of the environment. Environmental law is no longer a mere appendage of environmental policy ; it has become the principal means of any policy favourable to the environment.

2°) Since ignorance of the existing rules with regard to the environment is one of the reasons why the law is not enforced and environmental problems are becoming more acute, genuine information and training systems on environment law must imperatively be set up in each State and at international level. Seminars on national law, comparative law and international law must be organised regularly for those working in these fields and for N.G.O.S. in both developed and developing countries.

3°) It is essential that the ever-increasing number of international, world and regional conventions – proof in itself of the gravity and urgency of environmental problems – be effectively translated into national positive law. Campaigns of information and explanation must be organised to this end. Ways must be found to integrate the rules of international treaty law as directly, and in the most relevant way possible, into national legislation.

4°) The participants of the Limoges Conference direct the International Centre for Comparative Environmental Law to keep under review all preparatory events for the ECO 92 Conference at Government, U.N. and N.G.O. levels, in particular for the ECO 92 Conference at Government, U.N. and N.G.O. levels, in particular the Paris conference of December 1991, so as to publicise and make best use of the Limoges Declaration, and to harmonise its results as appropriate with similar work.

5°) The themes proposed for future recommendations with a view to the 1992 Conference are:

- ecological damage,
- technical standards for the environment,
- the role of regional and local customary law,
- patent law and protection of the environment,
- environmental protection and international trade,
- the role of economic and tax incentives
- financial and monetary aspects of international protection of the environment
- consideration of a draft Convention for the conservation and development of forests,

- preparation of a draft international Convention on arid and desert areas.

6°) As the N.G.O. which is representative of the community of environmental lawyers, the International Centre for Comparative Environmental Law, wishing to contribute directly to the preparation of the 1992 Conference, has drawn up, discussed and approved the 12 Recommendations which follow, ordered in four broad categories.

I – The effectiveness and application of the rules

II – The strengthening of the broad principles

III – The future areas of regulation

IV – The universal instruments for the promotion of environmental law.

RECOMMENDATIONS

I – The effectiveness and application of the rules

Recommendation 1 – Teaching, research and international expertise in the field of environmental law.

1 – The teaching of national of environmental law must be established, reinforced and generally extended in the universities of developed and developing countries. Such teaching shall also be aimed at judges and non-lawyers.

2 – Governments and international associations must be encouraged to finance training projects on environmental law and to help developing countries to introduce and promote environmental law in their educational systems.

3 – The teaching of environmental law to lawyers and to non-lawyers should devote more attention to international and multi-disciplinary approach to the environment.

4 – In co-ordination with other international bodies (U.N.E.P., I.U.C.N., etc), the International Centre for Comparative Environmental Law should:

4-1 – Draw up an inventory of existing training problems

4-2 - Draw up a framework program for training sessions on international and comparative environmental law

4-3 – Produce collections of texts for these programs, and general bibliographies on international and comparative environmental law.

4-4 – Offer training courses to those international and national bodies liable to take an interest in these programs and co-ordinate the organisation of these courses.

4-5 – Encourage local environmental law skills to associate with technical assistance programs in this field.

5 – International environmental law expertise is an essential activity of the Centre. In order to continue co-ordinating these activities, the Centre should:

5-1 – draw up an inventory of the missions and research conducted by its members

5-2 – Propose to the international organisations a list of experts on international and comparative environmental law

5-3 – propose and co-ordinate research topics

5-4 – publish and disseminate the results of this research

6 – The Centre must contribute directly to the development of international and comparative environmental law by conducting its own fundamental theoretical research in support of specific training and research programs. The Centre must publish and widely disseminate this research.

7 – Research, training courses and appraisals co-ordinated by the Centre must continue to be conducted in collaboration with the national and developing countries.

Recommendation 2 – The application of administrative rules protecting the environment

1 – Prior to their adoption, general texts regulating environmental questions (decrees in application of laws, orders, memoranda etc...) should be adequately publicised and debated in public.

2 – Activities liable to affect the environment (agricultural, industrial, mining or transport) must comply with rules protecting the environment. Administrative rules protecting the environment should be completed by tax incentives.

3 – On perfecting the authorisation procedure for industrial activities which have repercussions on the environment:

a) it is essential that the procedure take into account the observations and conclusions of the impact assessment and of any similar procedure (public enquiry etc...).

b) where major hazards might be involved, the public authorities must be able to call for a counter-appraisal with independent experts, the costs of which will be borne by the applying company.

c) the authorisation procedure must ensure that environmental protection associations are informed and involved. The authorisation must include technical standards (even in cases of scientific uncertainty) and a precise program of regular checks.

d) for activities which do little damage to the environment, the decision could be taken by the local authorities provided that national, rules are complied with and that measures enacted locally be at least as strict as national measures

4 – On supervision:

a) supervision must not be exercised by services related to the entrepreneur or by public authorities responsible for promoting industrial development

b) the supervisory bodies must be specialised and equipped to measure the state of the environment independently of the self-monitoring process.

c) companies must be able to conduct self-monitoring and be obliged regularly to transmit the results thereof to the authorities and to the public

d) those responsible for activities or works leading to serious pollution should periodically and at their own expense commission ecological the authorities and to the public.

e) the local authorities should be able participate in the monitoring process, with the involvement of the public, through special commissions.

5) On administrative penalties

- Alongside temporary closure measures, the administrative authority should be able to inflict administrative fines without prejudice to the rights of the defence. The amount of these fines should be determined in advance in the light of the gravity of the occurrences and taking into account repeated cases. The fines should be paid into a special fund for the restoration of the environment.

- In urgent cases an administrative authority or the judge should be able to order by injunction the temporary suspension of an activity which would be dangerous to health or to the natural environment or to require the operator to bear the costs of measures to restore or protect the natural environment.

Recommendation 3 – Environmental offences and sanctions

1 – Behaviour liable to endanger the environment must be sanctioned. Sanctions should be applied before the harmful results of such behaviour actually affect the natural environment.

2 – Prison sentences and the amount of fines must constitute a genuine deterrent

3 – National laws should not lay down time limits in respect of the most serious crimes against the environment

4 – Reinstatement, the closure of establishments and injunctions must be decided upon firstly under administrative and civil procedure and ultima ratio under criminal law, following the principle of criminal liability of natural persons for negligence.

5 – No-fault criminal liability of private or public legal persons must be covered, along with appropriate sanctions

6 – Public bodies monitoring the environment must be held liable for any deficiency or omission their functions in cases of serious danger or damage to the environment.

7 – The prosecution department must be totally independent so as to be able to institute criminal proceedings in respect of environment offences. Whilst maintaining its independence, the prosecution department must co-operate closely with the environmental authorities. It is essential to provide specialised training on the environment for the prosecution department.

8 – It is proposed that a police system, similar to Interpol, with instructions to seek and collect evidence of environmental crimes for the Public Prosecutor's Department of the States and for national courts, be set up.

II – THE STRENGTHENING OF THE BROAD PRINCIPLES

Recommendation 4 – The human right to the environment and the legal means of recognising it

Considering that the human right to the environment is increasingly recognised in the category of human rights not only nationally but also regionally and internationally.

Considering that social awareness is responding to the aggravation of the planetary ecological crisis, placing Man and not merely States at the centre of the new environmental protection strategy:

The Conference recommends as follows

1 – The human right to the environment must be explicitly and clearly recognised at national and at international level, and it is the duty of States to guarantee it.

2 – This human right must include the right to prior information for individuals and associations as well as access to, and participation in, decisions having an impact on the environment.

3 – The right of appeal to administrative and legal authorities should be recognised for individual persons, either in their own right or through environmental protection associations.

4 – Disputes on environmental questions should be submitted to an international legal instance accessible both to individual persons and to States, without prejudice to conciliation procedures

Recommendation 5 – The law with regard to associations

Considering that environmental protection associations make a major contribution to the efficiency and to the effectiveness of environmental protection:

Considering that they make it possible to put into practice the principle of the participation of all in the protection of the environment and that they guarantee the right to information which is recognised as a human right:

The Conference recommends as follows:

1 – all concerned persons should be encouraged to form environmental protection associations or to join existing associations;

2 – the question of a joint international status for all environmental protection associations and for environmental law associations in particular should be considered;

3 – States should be asked to amend their legislation with regard to associations so as to make it easier to establish and to run such associations;

4 – the right of environmental protection associations to sue should be generalised and strengthened in law, by recognising that they have a right to appeal to the authorities and the courts when the environment suffers damage;

5 – environmental protection associations should be involved with those mediation and conciliation authorities which may be proposed in the pursuit of peaceful settlements of environmental disputes;

6 – the access of the associations to information and to scientific and technical data should be guaranteed

7 – national legislations should provide for precise procedures governing the participation of the associations in decisions having an impact on the environment with particular emphasis on minimum deadlines to ensure the effective involvement of the associations;

8 – the associations should be called upon to improve their environmental know how and the technical competence of their members so as to increase their efficiency;

9 – exchanges of information and data between national and international associations should be encouraged by means of regular assemblies or meetings, to be encouraged by each association in turn (every two years, for instance);

10 – environmental data should be disseminated in accessible form to the public and especially to educational establishments of all kinds;

11 – States should be asked to introduce a levy, to allocate subsidies or, where appropriate, to amend their legislation in order to allow associations to receive tax-free donations or subsidies.

Recommendation – 6 - Impact assessments and evaluation of the state of the environment

1 – Impact assessments must be considered as one of the essential legal and scientific instruments for any national environmental conservation strategy.

Impact assessment must be regulated according to a procedure law down by binding texts; in case of projects where such assessments have not been carried out, the projects must be terminated and the sites reinstated. The provision of false information must entail criminal penalties.

2 – Impact assessments should accompany not only all works having effects on the national or transboundary environment but also all plans, programs and laws liable to affect the environment. All works or programs conducted in fragile areas must be subjected to an impact assessment.

All projects which are subjected to impact assessment must include in their budgets the cost of conducting these assessments and of corrective measures.

3 – Experts should be designated for the impact assessments subject to official approval certifying their competence, their independence and the multi-disciplinary character of their work.

4 – The minimum content of impact assessments must be strictly specified by national regulations.

Beside the usual features, impact assessments must:

- specifically analyse the effects of the project abroad, with reference to harmful effects ;

- present the state of the law applicable to the project (including international conventions), the legal rules to be applied to limit or to reduce the effects of the project on the environment, and observations as necessary on the absence of appropriate legal rules of a protective character ;

- present alternatives

- give an account of the social consequence for the population concerned, and evaluate the overall state of the environment ;

- assess cumulative impacts ;

- assess the situation of the entire area concerned ;

- note scientifically uncertain aspects.

5 – The impact assessment must be supervised by a specialised and independent scientific body.

6 – Where there is a danger of serious or irreversible harm to the environment, the competent authorities must be able to call for another study, as well as modifications to the project before any work is carried out or, where appropriate, the project is cancelled.

7 – The public must be informed in good time when an impact assessment is to be carried out, so as to follow the preparation thereof. It must be able to discuss its content according to an organised and fully debated. Private individuals and environmental protection associations must, enjoy a right of appeal to administrative and legal bodies even where their interests have not been injured.

8 – Compulsory a posteriori analyses of projects subjected to impact assessments must be carried out in order to verify the accuracy of the forecasts and to adopt the necessary corrective measures ; If necessary a review commission, composed of experts, associations and representatives of local communities, should be set up.

9 – Data collected through impact assessments must be systematically conserved and exploited to monitor the state of the environment and the improvement of scientific knowledge on ecological questions.

10 – International and inter-governmental organisations as well as financial institutions for development aid shall be obliged to carry out an impact assessment prior to any investment projects having effects on the environment, in close association with the local population and with the administrative authorities of the beneficiary country are competent for environmental questions.

11 – An international commission should be set up to help developing countries carry out impact assessments, and to provide legal and scientific assistance by means of appropriate data bases.

Recommendation 7 – No-fault liability for ecological damage

1 – The principle of no-fault liability for ecological damage must be affirmed in national and international texts as a general principle, except insofar as concerns criminal liability.

2 – This principle must not be restricted to dangerous activities. It must obtain in all possible cases of damage to the environment. The polluter can be exonerated only if there is proof that the activity was due to a given third party, or in cases of force majeure.

3 – The principle of no-fault liability should not nevertheless preclude the punishment of negligent behaviour.

3-1 – The existence of a fault should be taken into consideration from the viewpoint of causality, so as to facilitate proving the causal link to the victim.

3 – 2 – The paying entities (Security Funds, insurance companies, etc..) must be able to lodge an appeal after compensating the victim of a negligent polluter.

4 – States must consider the possibility of making companies situated on their territory directly liable for the transboundary ecological damage that they cause.

5 – States should work towards setting up international Funds to repair the damage caused to species and to areas coming under international protection, or ecological damage whose perpetrator it has not been possible to identify.

III – THE FUTURE AREAS OF REGULATION

Recommendation 8 – legal protection of soil

The Conference recommends that States adopt the following legal principles and measures in their national legislation.

1 – It is the duty of present generations to pass on to their descendants soil of quality, guaranteeing biological diversity and richness at least equal to that of today.

2 – The protection of soil is of general import, and its use must respect the public interests dependent upon its preservation.

3 – The right of ownership and rights in rem must be exercised without harming the general interest. Statutes on soil must establish the rights and obligations of owners activities which are liable to degrade the soil.

4 – New legislative means of a regulatory and institutional character highlighting the role of States must make it possible to address the complex issues and new activities which are liable to degrade the soil.

5 – Efficient legal means, covering reinstatement and the apportioning of liability, must provide solutions to the problem of contaminated sites.

6 – In the preparation of the new techniques, account must be taken of local aspects in order to involve the public in decisions on development projects.

7 – Since soil is a not entirely renewable resource, the consumption of land for non-reversible purposes must be limited (principle of reversibility and of economic use of soil) and as rational as possible, allowing soil successively to fulfil several functions (principle of multi-functionality); any use contrary to the natural role of soil must be taxed, and the revenue thus derived placed in a soil restoration fund.

8 – Soil must be used in accordance with integrated planning with a view to the spatial co-ordination of activities; soil types must be designated for use according to their functions, as defined on the basis of pedological inventories.

9 – Hydrographical and sub-hydrographical basins should be adopted as working units for supervisory and development activities.

10 – Among preventive measures of a regulatory character the impact assessment must be given pride of place, along with the definition of protection and restoration perimeters related to surface-waters and the creation of a network of biological reserves proportionate to the intensification of land use.

11 – Trade and financial policies of the developed countries vis-à-vis the Third World must not contribute to over-exploiting the natural resources of these countries.

12 – Development aid must be intensified, with particular emphasis on food production and the recovery of areas that are desertified or threatened by deforestation.

13 – A world soil survey should be organised, which would be based on the monitoring of its evolution, starting with an analysis of the present state of soil, and followed by the establishment of permanent observation networks.

14 – Measures to prevent diffuse pollution affecting soil and practical measures to restore damaged soil must be envisaged.

Recommendation 9 – Conservation of biological diversity

1 – The grave threats weighing on biological diversity must be apprehended in a global manner by the conclusion of a Convention including inter alia :

1-1 – as to the substance:

- a general obligation to conserve biological diversity and to use it sustainably.
- more particular obligations to conserve the areas that are richest in biological diversity against various threats.
- the obligation to subject plans and projects, including those for development aid, to impact assessment, as well as activities producing or using organisms that have been genetically modified by man and are liable to be harmful to biological diversity.
- the obligation to take the necessary safety measures, and to desist as appropriate aid, to impact assessment, as well as activities producing or using organisms that have been genetically modified by man and are liable to be harmful to biological diversity.
- the obligation to take the necessary safety measures, and to desist as appropriate from a given activity in order to avoid damage to biological diversity caused by the accidental or deliberate introduction into the environment of organisms that have been genetically modified by man.
- the obligation to inform the public, and local populations in particular, of the value of biological diversity and the importance of conserving it.

1-2 – as to the institutions:

- the establishment of a high-level independent scientific body with instructions to review the evolution of biological diversity in the world, to identify threatened ecosystems and species and to determine fields and areas where priority action is required.
- a financing mechanism which makes it possible to obtain from the international community the monies necessary for conservation and sustainable use of biological diversity, and to allocate these funds to priority projects in the form of subsidies or compensation and by technology transfer.
- a mechanism for co-ordination with other Conventions whose function would be inter alia to contribute to promoting the inception and development of these Conventions.

2 – The possibility should also be considered of establishing a system of international mediation or, where appropriate, of legal appeal which would make it possible to lead to practical solutions in cases of serious threats to biological diversity in a particular country.

3 – The application of any future international instrument on the conservation and sustainable use of biological diversity will often require preparing new national legal instruments. To this end research should focus especially on:

3-1 – adapting land legislation, regional planning and land and water use to the need to conserve biological diversity, in particular by establishing new forms of protected

areas where certain human activities would be maintained insofar as they are not harmful to biological diversity.

3-2 – Contract or incentive-based voluntary methods.

3-3 – Involving local populations in the preparation and implementation of plans for conservation and sustainable use of biological diversity.

IV – THE UNIVERSAL INSTRUMENTS FOR PROMOTION OF ENVIRONMENTAL LAW

Recommendation 10 – Draft Covenant on the conservation of the global environment and sustainable use of natural resources

1 – There exists a present need to state, in a coherent and comprehensive form, the progress which has been achieved to date in the international law of the environment.

2 – It is important that such a statement should be in a form which will facilitate its acceptance and adoption by the international community.

3 – It is essential that such a statement should reflect the very latest state of development in the international environmental law. In this context, the initiatives taken by the Government of Italy, the Chancellor of Austria and the Council of Europe should be applauded.

4 – Nonetheless, in view of the inadequacy of the existing principles of international law to address environmental problems of a scale and complexity never before encountered, there is an urgent necessity to modify some existing principles of international law and to devise new ones in order to meet this unprecedented challenge. In this connection, the work of the World Conservation Union (IUCN) in drafting a proposal to achieve this end is to be supported.

Recommendation 11 – Implementation of international environmental law

Convinced that the efficient protection of the ecological system of our planet depends not just on the development of appropriate legal regulations but even more on their faithful application.

Noting that current implementation of international environmental law is highly inadequate.

Considering a system is to a great extent due to the fragmented nature of the institutional framework as well as to the essentially intergovernmental character of most of the institutions.

Recommends a system for the implementation of international environmental law, based on the following principles.

1 – The bodies instructed to implement international environmental law which are composed of governmental representatives must be complemented by bodies composed of independent experts.

2 – These bodies must have competence to receive information, appeals or complaints submitted by States, competent international bodies, environmental protection associations and private individuals.

3 – The international public service role in the field of international protection of the environment must be strengthened.

4 – On this basis, a new international mechanism must be set up within the United Nations, consisting of :

- a High Commissioner for environment and development, and
- an International Commission for environment and development

5 – This mechanism shall be designed to supervise the implementation of international instruments concerning environmental protection and sustainable development. Some aspects of its powers could be covered by an optional clause.

6 – With regard to the High Commissioner

6.1 – The High Commissioner must be an independent personality, highly qualified in the field of environmental and elected for an appropriate period by the United Nations General Assembly. He shall not be eligible for re-election. He shall have available a secretariat sufficient to enable him to discharge his duties efficiently.

6.2 – The high Commissioner must be competent inter alia to:

- ensure that the rights and interests of future generations are represented and safeguarded;

- assume special responsibility with respect to the protection and use of the regions outside the limits of national jurisdiction;

- receive and examine communications issuing from States, governmental or non-governmental organisations, associations and private individuals concerning the implementation or breach of international instruments on environmental protection; where such communications are admissible, attempt to find an amicable solution to the problem raised and, failing this, transmit the communication to the International Commission or to any other appropriate international organisation;

- prepare and publish, in co-operation with competent scientific institutions and international organisations, special reports including recommendations on the state of the world environment and especially on critical situations endangering major ecological equilibria;

- call for the information which he may need from all appropriate sources in order to carry out his tasks.

7 – With regard to the International Commission

7 – 1 – The International Commission must be composed of a limited number of independent personalities, of high moral repute, renowned for their special competence in the different fields of environmental protection and elected for an appropriate period on the principle of representativity by the United Nations General Assembly. They shall not be eligible for re-election.

7 – 2 – The Commission must be competent inter alia to:

- receive and examine the reports addresses to it by States and international organisations, governmental or non-governmental, concerning measures taken to apply international instruments on environmental protection;

- receive and examine recommendations and proposals aiming to improve the implementation or to broaden the scope of international instruments on environmental protection;

- prepare and publish periodical reports on progress achieved in implementing international instruments on environmental protection;

- examine the communications transmitted to it by the High Commissioner, conduct enquiries thereinto and draw up reports establishing the facts, expressing an opinion on disputed matters and, where appropriate, proposing corrective measures.

7 – 3 – The Commission shall adopt a set of rules of procedure covering especially the preparation of the regular reports which the States shall be required to supply, and the possibility of holding public hearings.

8 – For the settlement of international disputes on the environment, it is recommended:

8 – 1 – That States resort to consultation, negotiations, good offices, enquiries, mediation, conciliation, arbitration, judicial settlement, and to the appropriate bodies or agreements, both universal and regional, or to any other peaceful means of their choosing, including recourse to the institutional mechanism referred to in paragraphs 4 to 7;

8 – 2 – That if States fail to arrive at a solution within reasonable time by another non-binding means of settlement, they shall submit the dispute to conciliation, at the request of any one of the States concerned;

8 – 3 – That if fail to arrive at a solution by means of conciliation, they shall submit the dispute to arbitration or to judicial settlement at the request of any one of the States concerned;

8 – 4 - That when States submit a dispute to arbitration or to judicial settlement, they shall have recourse in particular to the Permanent Court of Arbitration and to the International Court of justice, which latter could set up a specialised environmental chamber;

8 – 5 – That emergency procedures be available whenever necessary;

8 – 6 – That the thinking on the inception of an international environment court attached to the U.N. be pursued and developed in the context of the preparations for the 1992 United Nations on environment and development.

Recommendation 12 – Environment, development and peace

1- It is recommended that an International Fund for the Protection of Environment be set up, to be financed as follows:

- part of the resources to be derived from reductions in arms expenditure, in proportions to be determined;
- a contribution from multi-national industrial companies, in proportions to be determined;
- a voluntary contribution from the international organisations.

2- States must send to UNEP and to the competent regional organisations a yearly report on national measures to apply the international Conventions on environmental protection.

3- States must draw up sub-regional strategies for nature conservation and environmental protection. National strategies must be harmonised with these sub-regional strategies and be included in national development plans.

4- Every three years and with the help of UNEP, the States of each sub-region shall organise conferences to assess national and sub-regional nature conservation policies. These conferences shall be opportunities to inform and to increase the awareness of the States and the populations of the area concerned on new developments in international environmental law.

5- It is recommended that technologies be developed that are useful to environmental protection, to economising or to recycling resources, and to “clean” products (eco-products), and that knowledge of these technologies be made available.

6- Additional aid to States which integrate the environment into their development policies is advocated.

7- States must conclude bilateral, sub-regional or regional agreements to reconvert military scientific research to civilian ends and to reconvert armament industries into civilian industries integrating environmental protection.

8- it is recommended that education on the environment, development and peace be reinforced.

9- The preparation of a draft international Covenant on solidarity rights could contribute to promoting interdependence between environment, development and peace.