

## International Environmental Litigation in the Public Interest

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## Litigation in IEL

- Increased intensity and diversity in IEL litigation
- Expansion in available and active fora for resolution of environmental disputes
  - International Tribunal for the Law of the Sea (ITLOS)
  - World Trade Organisation (WTO)
  - European Court of Justice (ECJ)
  - European Court of Human Rights (ECHR)
  - International Court of Justice (ICJ)
  - Permanent Court of Arbitration (PCA)
  - Non-Compliance Procedures (NCPs)

## Public interest proceedings in IEL

- Opportunities for public interest proceedings in IEL
  - Traditional aversion to public interest international environmental law (PIIEL)
    - State responsibility and the *actio popularis*
    - Rare invocation (eg *Nuclear Tests Cases*)
  - Recent developments
    - *Articles on State Responsibility (2001)*
    - Non-compliance procedures
    - Civil society participation in IEL

## Civil society participation in IEL

- Public participation in IEL
  - 1992 *Rio Declaration*, Principle 10
  - 1998 *Aarhus Convention*, Article 3(7)
- Expanding role for civil society
  - Regime creation
  - Regime implementation
- Advantages of civil society participation
  - Policy development
  - Information and monitoring
  - Representing the public interest

## Civil society and PIIEL

- Exclusion of civil society actors
  - ICJ
  - ITLOS
  - WTO
  - 1987 *Montreal Protocol* and 1997 *Kyoto Protocol* NCPs
- Inclusion of civil society actors
  - *Aarhus Convention* NCP
  - North American Agreement on Environmental Cooperation (NAAEC)
  - Human rights bodies (global and regional)
  - European Court of Justice (but note *Greenpeace Case*)
  - Permanent Court of Arbitration

## Civil society and PIIEL

- Reconceptualising PIIEL
  - Functional limits of dispute settlement in IEL
  - Limits to the participatory 'revolution'
  - Public function of dispute settlement in IEL
- A realistic and achievable PIIEL
  - State and civil society cooperation
  - Civil society actors as *amici curiae*

## Civil society and PIEL

- **Civil society actors as *amici curiae***
  - World Trade Organisation
    - *Shrimp/Turtle Case* (1998)
    - *EC Asbestos Case* (2001)
  - International Court of Justice
    - *Practice Direction XII* (2004)
- **Civil society as *amici*: benefits**
  - Representing the public interest
  - Normative development
  - Enhanced regime legitimacy

## Future challenges for PIEL

- **Civil society as *amici*: perceived drawbacks**
  - Truly representative?
  - Balancing participation
  - Opening the floodgates
- **Retaining and expanding PIEL: the need for effective 'gatekeeping'**
  - WTO
    - *Asbestos Case (2001)* and *AB Additional Procedure*
  - NAFTA
    - *Methanex Case (2001)*
    - *Statement by Free Trade Commission on Non-Disputing Party Participation (2004)*
  - Appropriate criteria for accreditation