

Promoting the Judiciary in Environmental Compliance and Enforcement

Remarks by Durwood Zaelke, Director, and Ken Markowitz,
INECE Secretariat

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Good afternoon ladies, gentlemen, fellow members of the IUCN Commission on Environmental Law, and distinguished representatives of the judiciary from around the world. It is my honor and privilege to introduce you to and update you on the activities of the International Network for Environmental Compliance and Enforcement (INECE), on behalf of our Director, Mr. Durwood Zaelke, and the over 3000 participants in the INECE Network.

Increasingly, the world is recognizing that we need a stronger and more global rule of law, and that we need stronger and more global enforcement efforts, if we are to curb the excesses of globalization—including excesses of pollution, excesses from natural resource exploitation, and other adverse environmental impacts.

Indeed, enforcement and compliance are a fundamental part of the broader rule of law needed to address globalization; together, enforcement and the rule of law are the foundation for good governance and ultimately for sustainable development.

But at the same time that there is a cry for more global rules, and more enforcement, and a stronger rule of law, the world also fears centralized global government, and wants to ensure continued local accountability of those who govern.



One answer to this dilemma—that we need more global law and more global enforcement, and yet fear centralized “world government” that is not accountable to local interests—is the rise of transnational networks such as INECE.

INECE is an informal network dedicated to strengthening both cross-boarder and internal domestic cooperation by judges and the rest of the environmental enforcement team—investigators, prosecutors, regulators, parliamentarians, and NGOs.

This is what INECE does. We’re a global network, bringing together enforcement and compliance practitioners from around the world to build cooperation, strengthen capacity and raise awareness to respond to shared challenges in environmental enforcement and compliance.

INECE is helping build the stronger and more global rule of law that the world needs, but we are doing it through a decentralized network of accountable enforcement officials with the input of interested representatives from civil society.

INECE provides opportunities for sharing experiences, lessons learned and “best practices”—including best practices of the judiciary.

INECE is working on a project on comparative judicial remedies, to show how judges around the world remedy the environmental violations found in their societies. This ultimately will include comparative data on penalty policies, and a “penalty calculator” tool built on the best practices of judges and regulators from around the world.

Another INECE project on remedies is analyzing how the “Porter design principles” can be used by judges to fashion the most effective remedies.

The Porter design principles grow out of the work of Harvard Business School Professor Michael Porter and others working on the “Porter Hypothesis” – strict enforcement and compliance with properly designed laws provides “innovation offsets” that compensate for or even exceed the cost of compliance.

The growing empirical data, from developing as well as developed countries, confirms that this approach improves the competitiveness of firms and of countries, especially in natural resource based economies

INECE is also looking at other opportunities for judges to use to encourage broader process changes both at the level of the firm, and also at the level of the regulators and even the parliamentarians. This might include issuing “legislative remands”, when judges force an issue back to the legislative body for clarification. It also might include exercising the oversight function many judges have, for example over rules of procedure, or over other aspects of judicial administration.

An example of such a simple administrative procedure change is provided by the Philippine Supreme Court. Working with an INECE Board member, the Philippine Supreme Court recently established a requirement for lower courts to report on the status of their environmental cases on a regular basis. This simple process change is having a big impact on making sure the cases move forward at a suitable pace.

Furthermore, INECE has developed a considerable body of literature on enforcement and compliance through the proceedings of our six international conferences. Over 600 articles are on the INECE Web site, in a full-text searchable database. We’re also editing a new book with the best of the literature in this field, for publication next spring, in time for our 7th INECE International Conference, which will be held in Marrakech, Morocco, in April of 2005.

Finally, the INECE Compliance and Enforcement Indicators Project has inspired pilot countries around the world to better measure and manage compliance and enforcement activities. On Thursday evening, INECE will co-sponsor, with the Commission on Environmental Law and the World Bank Institute, a workshop on applying the lessons we have learned on performance measurement for conservation issues.

We encourage you to participate in the INECE Network and visit our Web site at www.inece.org to learn more about INECE activities and opportunities that can assist you in responding to the challenges presented regarding excesses of pollution, natural resource exploitation, and other adverse environmental impacts.

Thank you very much for this opportunity, and I wish you all a very successful World Conservation Congress.