1. Introduction

Environmental disputes at odds with international judicial procedures

International environmental law has grown in the last decades, both quantitatively and qualitatively. Therefore, the question of enforcement of this body of rules has been under growing scrutiny too. International dispute settlement is only one of the means available in the international legal order to ensure proper application of those rules. It is also often argued that it is a weak tool to rely on, if the aim is to ensure full implementation of international environmental law. However, and despite its inherent limitations, this tool can be improved, and this is what this book sets out to explore. More specifically, this book aims to analyse how international courts and tribunals can respond procedurally to the growing category of cases that involve environmental rules, in an effort to sharpen international environmental justice and governance within the constraints of the existing judicial framework.

1. THE PROBLEM OF ENVIRONMENTAL DISPUTE SETTLEMENT

Environmental discourse has motivated the development of international environmental law through various means, for instance through the adoption of the Stockholm Declaration during the UN Conference on the Human Environment in 1972 and the consequent establishment of the UN Environmental Programme (UNEP), followed 20 years later by the adoption of the Rio Declaration. Both texts are the result of political summits where

state representatives showed their willingness to commit to environmental goals. Moving beyond treating it as merely a nominal goal, the international community soon established environmental protection as a legal and administrative field in its own right. International agreements multiplied, albeit with no formal hierarchy and few links to one another; these included a multitude of conventions covering the protection of specific environmental issues, such as climate change (such as the UNFCCC\(^5\)), environmental impact assessments (such as the Espoo Convention\(^6\)), the conservation of biodiversity (such as the Convention on Biological Diversity\(^7\)), the protection of the marine environment (such as found in the UNCLOS\(^8\)) and of certain species (such as the Whaling Convention\(^9\)). Through these agreements, states began to perceive international environmental law as a global and all-encompassing legal framework, as well as an appropriate way to fight for environmental protection. Nevertheless, the variety of rules and possible types of protection is vast, culminating in myriad potential disputes. This begs the central question: how may these be resolved?

The foundation of this book relies on the assumption that procedural matters are interrelated with substantive matters, in that they have to respond to each other. Therefore, this book seeks to explore the relationship between the established international courts and tribunals and the relatively new corpus of international environmental rules.

Within the field of interstate dispute settlement, the mechanisms that exist to solve international conflicts over the environment present a critical pressure point. Instead of a smooth process of adjudication, conducive to timely judgements that benefit all parties, there seems to exist a disjointed system offering more stumbling blocks than solutions. Often, the interstate judicial settlement is stigmatized as old-fashioned, and therefore inadequate to respond to the new legal developments in international environmental law.\(^{10}\) This pessimistic view of existing mechanisms and the development of parallel theories analysing how to achieve greater compliance with environmental rules have led to the

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\(^7\) Convention on Biological Diversity (1992).


\(^{10}\) The term ‘adequacy’ is preferred to the term ‘efficiency’ as it emphasizes the need for judicial bodies to correspond to the specificities of international environmental protection. This discourse does not help answer the questions asked in this project as effectiveness of judicial bodies does not automatically correlate with the efficiency of the legal framework. Nor can it be assumed to correlate with the procedural mechanisms constituting international courts and tribunals.
creation of alternative types of conflict resolution mechanisms, labelled as non-compliance procedures. Such developments raise the question of the relationship between judicial settlement and these alternative mechanisms.

1.1 The Definition of Environmental Disputes

What makes a dispute environmental? Some scholars have taken the risk to provide a definition. In 1975, for instance, Bilder defined environmental disputes as ‘any disagreement or conflict of views or interests between States relating to the alteration, through human intervention, of natural environmental systems’ and enumerated nine factors determining the categories in which a dispute could fall. These factors would also guide each case towards an appropriate resolution mechanism. Cooper, in 1986, gave a similar definition, enlarging the categories to include transnational disputes. But as Romano stressed, the notion of environmental disputes has a changing nature. A rigorous definition would not be useful in a broader context. Similarly, Sands avoided defining the exact content of an environmental conflict by saying that it is useless to define it since parties are unlikely to agree on the characterization of a dispute as environmental. Sands preferred to talk about ‘disputes which have an environmental or natural resources component or which relate to that’.

It is important to note that there is no binding decision from an international court or tribunal that relates solely to environmental law. The cases invariably included aspects that were non-environmental as well.

The question of defining disputes as environmental is intrinsically linked to the question of what international environmental law is. Since it has grown via a multitude of treaties with a vast array of purposes, which can even at times contradict each other, and since environmental issues often touch other areas of law – trade being one (an example of which is the Convention on

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11 See Chapter 7 of this book for further discussion.
International Trade in Endangered Species of Wild Fauna and Flora\textsuperscript{16} – these complexities are also reflected when disputes about their implementation arise. The matter is complicated further by the fact that in certain cases, states may have a political incentive to avoid classifying a dispute as environmental, as in the case of Slovakia in the \textit{Gabčíkovo-Nagymaros} dispute.\textsuperscript{17} In short, the usefulness or applicability of any provisional definition is undermined by the possibility that the parties will disagree on the nature of the dispute.

Moreover, the definition of a dispute as environmental does not carry many consequences \textit{per se}. Indeed, when parties to a dispute bring a claim to an international court or tribunal, they do not name the conflict beforehand. This might partly explain why the Special Chamber for Environmental Matters in the International Court of Justice (ICJ) has never been used.\textsuperscript{18}

Another problem relates to the impact of international environmental rules on other areas of law, such as trade law or human rights law. Specifically, whether the obligation breached determines the nature of the conflict or the determination of the factual situation is the key element in deciding the environmental nature of a dispute. In either case, there are consequences on the scope of the dispute. For example, the World Trade Organization (WTO) panel in \textit{Canada – Certain Measures affecting the Renewable Energy Generation Sector} did not qualify the dispute as related to the environment, but instead as an ‘investment and trade dispute’, yet the subject matter of the dispute – the domestic content requirements for certain generators of electricity utilizing solar photovoltaic and wind power technology – is obviously linked to the protection of the environment.\textsuperscript{19} In this case, the parties’ claims did not include any environmental aspects, which legitimized the tribunal’s rejection of arguments based on environmental protection. Sands confirms this view by saying that ‘at the root of international environmental conflict lies the actual or perceived failure of a State to fulfil its international environmental obligations under customary law … or international treaty obligations’.\textsuperscript{20}


\textsuperscript{19} \textit{Canada – Certain Measures Affecting the Renewable Energy Generation Sector} Reports of the Panels, WT/DS412/R; WT/DS426/R, p. 31, para. 7.7.

Introduction

The question of whether the status of such disputes arising under specific treaties that are not environmental by design should be considered environmental is crucial for the better application of those treaties, but is not here the object of study. The scope of this book is limited to international courts and tribunals that can apply international rules directly related to the protection of the environment, excluding rules that merely have a tangential relationship to the environment. More specifically, this book will look at multilateral and bilateral agreements currently in force that establish some environmental obligation on states, as well as general international law and principles that apply to the protection of the environment, including customary rules.

1.2 Focus on Interstate Courts and Tribunals

Despite the evolution of the international legal order towards a broadening of the actors involved at all stages, from the design of the rules to the recipients of rights and obligations, to the implementation and enforcement of the rules,21 this research is focused primarily on interstate judicial bodies that directly apply international environmental legal rules. Interstate courts and tribunals remain a central element of the international legal order, and are by and large recognized by states as such. However, the application of international environmental rules requires certain procedural adaptations so that international courts and tribunals can make better judicial decisions. The idea is to understand whether and in what ways the judicial institutions, which were created on traditional understandings of international law, can adapt to environmental disputes, which emerged much later.

Other courts, such as regional human rights courts and investment tribunals, also have to deal with environmental issues. While efforts by these courts to integrate environmental aspects into their frameworks are ongoing,22 this book is interested in the reaction of the institutions of interstate litigation that have to apply international environmental obligations directly. To that end, practices from other tribunals will be analysed only in their capacity to provide useful comparisons.

The international legal system has witnessed a proliferation of international courts and tribunals,23 but not all can hear cases based on international environ-

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mental rules. The existence of diverse international courts and tribunals nevertheless offers states different fora in which to bring their disputes. There are courts of general jurisdiction or more restricted jurisdiction. Some can apply any international rules, while others can only apply a certain area of law (such as the International Tribunal for the Law of the Sea, or ITLOS). Indeed, the extent of the competence of the courts can vary according to factors such as the ‘subject-matter (jurisdiction ratione materiae), the person appearing (jurisdiction ratione personae), the geographical scope (jurisdiction ratione loci), and the time (jurisdiction ratione temporis)’. The limitations on the rules of standing in a judicial procedure are of particular importance in environmental matters. This question will be analysed in Chapter 3, as it raises issues in relation to substantive environmental rules. Despite their proliferation, courts and tribunals that are competent to hear cases based on international environmental law remain few, precisely because of the limitations on the jurisdiction ratione materiae. Courts such as the World Trade Organization Dispute Settlement Understanding (WTO DSU), the International Criminal Court (ICC) or human rights courts cannot hear cases based on environmental rules because their jurisdiction is limited to specific areas (trade, criminal or human rights law). The remit of this book will consequently be limited to the courts that can apply international environmental law directly: the ICJ, the ITLOS and arbitral tribunals. This book includes both permanent courts and ad hoc tribunals, and their differences will be taken into account in the analysis.

In order for an international judicial body to exist, it must exercise the Kompetenz-Kompetenz generally provided by a treaty, but also through its inherent powers. Regardless of their origins, courts posit that they hold inherent powers in one form or another. The use of this Kompetenz-Kompetenz

Politics 709; Shane Spelliscy, ‘The Proliferation of International Tribunals: A Chink in the Armor’ (2001) 40 Columbia Journal of Transnational Law 143. Both articles are concerned with the implications of such proliferation.

24 Article 36(1) ICJ Statute.
25 Article 21 ITLOS Statute.
27 Interpretation of the Greco-Turkish Agreement of 1 December 1926 (Final Protocol, Article IV) [1928] PCIJ Ser B No 16, p. 20; Nottebohm case (Preliminary Objections) [1953] ICJ Rep 1953 P 111, p. 119–120.
28 Chester Brown, ‘The Inherent Powers of International Courts and Tribunals’ (2005) 76 British Yearbook of International Law 195, 223. The author explains that there are four different possible sources of inherent powers: “the concept of “general principles of law”; the doctrine of implied powers; the identity of international courts as judicial bodies; and a functional justification”.

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by international courts and tribunals themselves is a determinative element in establishing the judicial character of a certain court. Accordingly, both permanent courts and ad hoc tribunals have judicial powers that are scrutinized in this research. Moreover, a large number of multilateral environmental agreements specifically mention ad hoc arbitration as a means to settle disputes, at times in conjunction with other fora such as the ICJ, at others, as a compulsory means to reach a resolution.  

2. The Need to Reconcile Judicial Procedures with Substantive Law

The foundation of the book relies on the necessity to connect judicial procedures with substantive law. They are not two independent bodies of rules, and judicial procedures need to evolve together with the evolution of substantive law. Jenks summarized this as follows:

In every legal system law and procedure constantly react upon each other. Changes in the substantive law call for new procedures and remedies; new procedures and remedies make possible changes in the substantive law. So it is in international law; if we wish so to develop the law as to respond to the challenges of our times our procedures and remedies must be sufficiently varied and flexible for the purpose.

Environmental disputes have posed a particular challenge to international judicial procedures, questioning whether the current procedural rules are sufficient and well suited.

2.1 The Existence of International Procedural Law

Judicial procedures have to follow substantive developments in the law, including international environmental law, or they risk creating gaps in the implementation of new rules. This is why this book aims to assess the problems faced by international courts in environmental disputes and to offer potential avenues where shifts in judicial practices are possible. The question at the heart of this book is: what shifts are available to international courts and tribunals that would diminish the gaps between the substantive rules of international environmental law and their judicial enforcement? As international environmental law evolves to respond to the new challenges, international courts and tribunals need to evolve in parallel. In other words, this book identifies where

29 See, for example, Article 32 of the OSPAR Convention.
30 Clarence Wilfred Jenks, The Prospects of International Adjudication (Stevens & Sons 1964) 184.
international courts and tribunals have certain procedural flexibility to act and adapt to the changing needs of environmental disputes. Indeed, international courts generally have the power to decide on their own procedural rules;31 this creates room for them to adapt more rapidly and of their own accord, without having to amend their foundational treaties. Kolb notes that the development of procedural principles started with the inception of international tribunals: ‘There is no doubt that since the Jay Arbitrations at the end of the eighteenth century, there has been a growing body of judicial case law which progressively established a series of rules and general propositions about the arbitral or judicial handling of disputes.’32 This is evident in many decisions where tribunals have referred to their own ability and power to decide on procedural matters, using concepts such as ‘judicial notice’,33 and other ‘attributes of … judicial function’,34 to support their powers in deciding procedural matters.

Given the flexibility of judicial bodies to decide on their own rules of procedure, the book focuses on how these should be designed and used so that they respond effectively to substantive developments in international environmental law. The main argument in this book is that procedural rules are only as good as the strength of their connection to substantive rules. This presents opportunities for international courts to use their procedural power and flexibility to adapt their procedures for environmental disputes. This is the thrust of the questions asked in this book and why the blanket assumption that international courts are inadequate for environmental disputes will be challenged.

2.2 The Alleged Inadequacy of International Courts and Tribunals in Environmental Disputes

The UN Charter obliges states to settle their disputes ‘in such a manner that international peace and security, and justice, are not endangered’.35 Whenever a dispute arises, it has to be settled through a range of mechanisms, enumerated in Article 33 of the UN Charter – adjudication being one of them.36 It is indeed

33 Fisheries Jurisdiction (United Kingdom v Iceland) (Merits) [1974] ICJ Rep 1974 P 3 [17].
35 Article 2(3) UN Charter.
36 Possible resolution can be found in, amongst others, negotiation, inquiry, conciliation or the use of non-compliance procedures.
important to bear in mind that international litigation is a part of a broader dispute settlement process. Furthermore, Article 33 shows that legal mechanisms are optional and not meant to be the first port of call. Nevertheless, there is a tension nowadays between a certain legalization of dispute settlement procedures and the emergence of many non-binding mechanisms. Judicial dispute settlement has been used with rising frequency over the years, voluntarily or through membership to certain treaties and institutions (spanning from the WTO DSU, the ITLOS, to the obligation to accept a binding settlement of disputes in order to join a community such as the European Union). Meanwhile, an increasing number of non-binding mechanisms have been created through the adoption of multilateral environmental agreements (MEAs). In this context, it has been admitted there is ‘ambivalence in state practice and in scholarly commentary concerning the role of international environmental litigation’.

Two phenomena occurring over recent decades have triggered the need for this research. On the one hand, the judicialization of international law has forced international tribunals to enhance their procedures as they grow in importance; on the other, multiple forms of dispute settlement have also grown in importance, potentially destabilizing judicial institutions, but also requiring some reinforcement and adaptation from those judicial institutions.

In other words, while an augmentation of competent courts and tribunals – the ICJ, the ITLOS, the WTO DSM, the International Centre for the Settlement of Investment Disputes (ICSID), the European Court of Human Rights (ECHR), the European Court of Justice (ECJ), and the Inter-American Human Rights Court (IACHR) – has been noted, it is often concluded that non-contentious procedures are preferred over litigation. The reasons for this choice are based on several elements, of which the most prominent are the vagueness of environmental rules due to the high degree of compromise in the building process of MEAs, the highly scientific issues raised by environmental disputes and the multifaceted features of environmental claims.

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39 This aspect will be dealt with in Chapters 4, 5 and 6.
41 This aspect will be dealt with in Chapter 7.
It is true that environmental protection has needs that are not easily reconcilable with the traditional conception of judicial settlement in international law. Some concepts on which environmental protection is based go beyond what traditional international law can do. The concerns raised about the inadequacy of judicial procedures are mainly related to the nature of international courts and tribunals. Some of their features seem to be in opposition with the developments in international environmental law.43

In particular, judicial dispute settlement has been criticized for being inherently bilateral and adversarial, rendering the integration of third parties difficult and, as a result, obstructing a polycentric approach to solving environmental problems.44 International environmental law not only contains reciprocal obligations – the most suited for international litigation45 – but also puts a strong emphasis on collaboration between the different states, and thus creates integral obligations. It is often the view that greater environmental protection is achieved through better collaborative actions, which is in opposition to the concept of adjudication.

Another concern has been raised about the high dependence on scientific knowledge of environmental issues, which judicial tribunals can find hard to address.46 The technical character and complexity of the factual settings of environmental disputes can create a barrier from a procedural but also a financial point of view, making international litigation prohibitively costly.

It is also often argued that the different remedies provided in judicial decisions do not correspond to the preventive nature of environmental protection, which aims primarily at avoiding irreparable harm to the environment.47 In this context, the length of the procedure becomes an issue in effectively mitigating environmental harm. Additionally, the legal standards applied by the courts and tribunals (for example, the law on state responsibility) have been considered unhelpful in an environmental context.48

44 Birnie, Boyle and Redgwell (n 1) 211–213.
47 Bilder (n 12) 154–155.
48 Stephens (n 37) 68–69; Birnie, Boyle and Redgwell (n 1) 236–237.
Moreover, the nature of certain international obligations can also negatively affect the impact of international litigation. Some rules of international environmental law are unsettled as to their binding nature or their global applicability, which can create further problems for international courts.49

Although the ill-suited nature of international courts and tribunals has been broadly claimed, states have in the past few years submitted a significant number of cases involving environmental protection to various interstate tribunals, namely the ICJ, the ITLOS, or arbitration, such as the Whaling case,50 the Pulp Mills case,51 the Southern Bluefin Tuna cases,52 the Land Reclamation case,53 the Indus Waters Kishenganga arbitration,54 the Certain Activities in the Boarder Area case,55 the Mauritius/UK case,56 and the South China Sea arbitration,57 among others. This increase in cases shows that states themselves are inclined to bring a case to an international tribunal. The fact that states accept the character of such entities as judicial organs, and also acknowledge that judicial bodies have inherent powers and are neither subordinate nor subsidiary to any other body, is critical for the success of the international judiciary. Sands and Treves also explore the implications of this by emphasizing the growing role of courts and tribunals in the application of international environmental law.58

49 Birnie, Boyle and Redgwell (n 1) 211.
52 Southern Bluefin Tuna cases (New Zealand v Japan/Australia v Japan) Provisional Measures, Order of 27 August 1999 ITLOS Reports 1999. The arbitration was held at ICSID (see www.worldbank.org/icsid).
53 Case concerning Land Reclamation in and Around the Straits of Johor (Malaysia v Singapore) (Provisional Measures, Order of 8 October 2003) ITLOS Reports 2003. The dispute was settled on the merits under the PCA on the 26 April 2005 (see www.pca-cpa.org/showpage.aspx?page_id=1154).
57 South China Sea Arbitration (The Republic of the Philippines v The People’s Republic of China) PCA Case No 2013-19 (Merits) [12 July 2016].
Besides, interstate adjudicatory bodies have created frameworks intended to include environmental claims as part of their competences, such as the ICJ and the creation of the Chamber for Environmental Matters in 1993 (which was then closed in 2006 because it had never been used), or the Permanent Court of Arbitration Optional Rules for Arbitration of Disputes Relating to Natural Resources and the Environment adopted in 2001 (also never used). These attempts demonstrate the tribunals’ willingness to hear environmental cases and their intention to give them a dedicated forum. The lack of engagement from states with these specialised rules does not mean that states are not willing to bring environmental disputes before international courts. The existence of numerous cases concerning the environment shows otherwise. Rather, the non-use of these specialised rules may pertain to the difficulties of a dispute being solely environmental, with no other areas of international law also at stake.

2.3 Can We Still Talk About Inadequacy Today? If Yes, How Do We Resolve It?

The wider research question at the heart of this book is therefore whether international courts and tribunals have a meaningful and justifiable role to play in the enforcement of international environmental law. Can the above arguments against the submission of environmental disputes to adjudication be refuted, and if so, to what extent? The central argument – and main original contribution – is that, despite the many limitations of judicial settlement as exemplified above, judicial institutions are well placed to adequately answer violations of international environmental law, assuming that the mechanisms provided are used to their full potential. In fact, international courts and tribunals have the potential to solve environmental disputes adequately despite the fact that their roles have been challenged. The inherently dynamic nature of procedures within international courts and tribunals is at the core of the arguments developed in this book, which relies on the assertion that international courts and tribunals have tools at their disposal that – if used appropriately and creatively – can be adapted to the needs of environmental disputes. By tackling certain critical procedural aspects in turn, each chapter works to substantiate this assertion. In other words, not only is the structure of international courts and tribunals flexible enough to allow the developments needed for the appropriate handling of environmental disputes, the chapters that follow provide evidence that relevant developments have in some cases already been put into practice.

3. STRUCTURE OF THE BOOK

The argument that broadly develops in this work is shaped to emphasize at each procedural step where the pitfalls are and how they can be tackled. The book is centred on the idea that international courts and tribunals have a role to play in the protection of the environment, and it seeks to define the contours of that role. Indeed, within the given scope of international adjudication, ways of interpretation, mechanisms and procedures can all be developed. These often prove helpful for enhancing environmental protection through traditional adjudication. Indeed, by analysing the most contentious procedural aspects of international litigation, the suitability of such litigation for environmental disputes will be assessed. The conclusion will outline that the procedural changes necessary for a more understanding judicial system can be effected within the legal boundaries of current international courts and tribunals.

But before tackling each individual procedural pitfall, the book defines what roles international courts and tribunals can play in environmental disputes. Therefore, the next chapter (Chapter 2) considers the different functions of international courts and tribunals and how the specificities of environmental disputes affect those functions.

Once the roles of international litigation have been established, the book focuses on three main procedural steps at stake in environmental disputes. In Chapter 3, the analysis concentrates on how the judicial procedures can be triggered (or the question of ‘how to get in’). In Chapters 4, 5 and 6, it looks at the mechanisms and procedural problems attached to the judicial bodies (or ‘once you are in’). Finally, Chapter 7 focuses on the location of judicial bodies within the broader dispute settlement regime relevant for the application of international environmental law (or ‘in/out relationships’). With these three broad elements, it is then possible to evaluate the role international courts and tribunals play, and to establish their limitations and advantages.

More specifically, Chapter 3 examines the rules on standing to access international adjudicatory bodies and how they can be interpreted in different ways: is there potential for broader applications, including the defence of the public interest? Public interest litigation is also contextualized within the field of international environmental law. This body of rules is defined as a multi-layered set of rules, layers that are correlated with the structure of international litigation. The implementation of international environmental law in judicial procedures is therefore analysed on this basis. Jurisprudence particularly shows that both non-state actors and states can participate and contribute to the defence of the public interest in interstate disputes. Given the centrality of global commons to international environmental law, this chapter deserves special emphasis. It focuses on the potential compatibility between the interna-
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tional judicial system as a traditionally state-centric system and developments in international environmental law, and offers an original interpretation of the ways to overcome the discrepancy in disputes over areas and resources beyond national jurisdictions and global environmental problems.

Chapter 4 scrutinizes how facts are established in an environmental dispute. This task is of paramount importance for the good functioning and relevance of international dispute settlement regarding environmental cases. Complex environmental cases based on contradictory or controversial scientific evidence require more developed judicial procedures, but are international courts and tribunals equipped for those? The uncertainty around the accuracy of scientific facts is thus reviewed, examining the types of evidence that can be brought before international courts and the way these courts judge on the evidence.

Next, even though international courts and tribunals were not initially designed as a preventive mechanism, but rather as a reactive system of dispute resolution, Chapter 5 demonstrates how provisional measures as a preventive judicial mechanism can change this assumption. In the context of the current law on remedies as stated in the International Law Commission (ILC) Articles on State Responsibility, provisional measures of protection can fill an important gap.

Following the analysis on provisional measures, Chapter 6 examines the role of international courts regarding the award of remedies. The question of the concrete outcome of a judicial procedure is central for the settlement of environmental disputes. Yet, the law on remedies may not be as developed as needed for the smooth resolution of environmental disputes. Therefore, this chapter aims at clarifying the purposes of remedies in the international judicial process, how international courts and tribunals use their remedial powers and whether there are any opportunities for environmental dispute resolution going forward.

Lastly, because of the existence of non-compliance procedures and judicial dispute settlement within most multilateral environmental treaties, the highly significant question of what kinds of relationships exist between the two procedures is examined in Chapter 7. While there has not been a case where both procedures were triggered at the same time, conceptually, it is important to develop a model of how the relationship should be and what consequences are attached to each model. This can also reinforce both the role of international dispute settlement in environmental conflicts and the overall enforcement of international environmental obligations.

The analysis concludes by emphasizing that the existing resources available to international courts and tribunals can be used and interpreted in a manner that is both adequate and fitting with environmental disputes. As mentioned, the book shows how certain developments necessary for environmental disputes have already been used by the courts in certain instances. Although the
future use of international courts and tribunals cannot be predicted, this book argues that the procedural rules as they stand can be interpreted and used in a favourable way for judging environmental disputes in a coherent manner. Indeed, the opening of judicial litigation to non-state actors and the recognition of a measure of public interest in the current jurisprudence shows that international courts and tribunals are capable of evolving in this direction. The use of science in international litigation can also be adapted to the needs of environmental disputes. Similarly, the use of provisional measures in tandem with environmental disputes is noted, and can potentially be pushed further without necessitating formal reform. Finally, the potential collaboration between non-compliance mechanisms and international courts and tribunals can also enhance the judicial protection and adequacy of international courts and tribunals.