

THE BASICS OF LEGAL WRITING

By - Sayere Nazabi Sayem

What is Legal Writing?

Why is it necessary?

TYPES OF LEGAL WRITING

Academic
Writing

Opinion Writing

Laws

THINGS TO NOTE

- Topic
- Length
- Structure*
- Tone & Language
- Readers
- Depth of Research**
- References?

PRACTITIONER'S VIEW

IRAC

- **ISSUE**
- **RULE**
- **APPLICATION**
- **CONCLUSION**

OTHER WAYS: CRAC

☒ **Conclusion**

(e.g., Nafis has committed the Murder of Shawana)

☒ **Rules**

1. relevant statutory laws or treaties
2. recognised general principles of laws,
3. case precedents or judicial decisions
4. scholarly publications (books, journal articles, etc.)

☒ **Application**

Description of the above materials, in relation to the facts

☒ **Conclusion**

(e.g., As per --- and that, it is apparent that Nafis has indeed committed the Murder of Shawana)

ACADEMIC'S VIEW



Format may vary depending on the
publication outlet

However, the basic remains intact:
Introduction, Body, Conclusion

KEY DIFFERENCES

TOPICS & VARYING DEPTH OF RESEARCH

EXAMPLE:

1) THE APPLICATION OF INTERNATIONAL LAW IN THE MUNICIPAL LEGAL SYSTEM: A HIGHLY AD HOC AND AMBIVALENT APPROACH IN BANGLADESH EPITOMIZING A BROADER HERMENEUTICS TREND?

2) CAN INTERNATIONAL LAW BE USED IN DOMESTIC CASES?

REFERENCE TO SCHOLARLY WORKS

Lawyers don't. Academics do.

OVERALL STYLE

Compact vs. broad



Read! And read some more!

Thank you!

MEMO ON SECTION 19 OF THE LABOUR ACT, 2006

The purpose of this memo is to shed light on the issue regarding who should an employer pay in the event a worker deceases while being in service.

Section 19 of the Act, provides as follows:

Compensation for death: If a worker dies while in service for at least more than 02 (two) years continuously under an employer, such employer shall pay as compensation 30 (thirty) days wages or, in the case of his death while working in the establishment or in the case of his death following an accident while working in the establishment 45 (forty five) days wages for every completed year of his service or any part thereof exceeding 6 (six) months or gratuity, whichever is higher, to the nominee of the deceased worker or, in the absence of the nominee, to his dependent and this money shall be in addition to the retirement benefit to which the deceased worker would have been entitled had he retired from service.

As it appears, if a worker, while being employed under an employer, deceases after completing 2 years of continuous service under such employer then the employer shall be liable to pay the following compensation in addition to the retirement benefit such deceased worker would have been entitled:

- Compensation at the rate of 30 days' wages for each completed year of service; **or**
- Compensation at the rate of 45 days' wages for each completed of service or gratuity, whichever is higher, in the event the worker deceases while working in the establishment or his demise was resultant from an accident while working in the establishment.

In any of above instances, the employer is liable to pay the benefits to the following persons:

- To the nominated person of the deceased worker; **or**
- To the dependent of the deceased worker, if the deceased worker did not nominate any person prior to his demise.

Therefore, as per Section 19 of the Act, the compensation of a deceased worker shall be primarily paid to the nominated person of the deceased worker. However, such compensation can be paid to the dependent of the deceased worker only if the worker did not nominate any

person prior to his demise. It is to be noted that such an amount will be in addition to the retirement benefits the deceased worker was entitled to after retirement.

Legal Counsel/ Client Communication
Privileged and Confidential

November 2, 2024

VVV Bangladesh Limited
[Address]

Attention: Head of Legal

Re: Legal Opinion.

Dear Mr. Rahman,

This is in reference to your email dated 14.10.2024, wherein you sought our opinion regarding the following issues under the applicable labour laws of Bangladesh.

We understand from your instruction that VVV Bangladesh Limited (“the Company”) has been receiving various kinds of services from the Service Provider, E-Zone HRM Ltd., in exchange for remuneration and benefits that are provided to the 3rd Party Employees as forms of salary, festival bonus (gross salary), provident fund, earned leave encashment, insurance and other benefits when the Service Provider raises the invoices. However, the Company is now considering a new arrangement where it will pay the Service Provider service fees, and there will be no separate components such as salary, festival bonus, provident fund, etc. and will be based on headcounts instead.

We have been provided with the Service Agreement between the Company and the Service Provider, and a description of the different types of services provided by the 3rd Party Employees at VVV Bangladesh. We have gone through the same, and upon considering the governing laws, The Bangladesh EPZ Labour Act, 2019 and The Bangladesh EPZ Labour Rules, 2022, the queries and the adjacent opinion is as follows:

1. Whether it would be wise for the Service Provider to terminate the agreement upon mutual agreement and settle their separation benefits prior to VVV entering into the Service Agreement whereby the vendor will provide services only?
2. Whether there is any obligation on the part of the Company to consider the 3rd Party Employees as a full-time employee of the Company and be liable to pay end service benefits if demanded by such employees, with respect to Rule 17 of the Bangladesh Labour

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Rules 2015? Whether this can be minimised or mitigated by entering into a Service Agreement for services as being contemplated?

Our opinion is as follows:

- 1. Whether it would be wise for the Service Provider to terminate the agreement upon mutual agreement and settle their separation benefits prior to VVV entering into the Service Agreement whereby the vendor will provide services only?***

Considering that the pre-existing Service Agreement has been ineffective since 1st July 2024 as per clause 7.1 with the cessation of its 3 (three) years validity, without any further notice of continuance; the Service Providers may receive their due remuneration (as enclosed in the Agreement):

4.1 Service Provider shall receive remuneration for provision of the Approved Services to VVV in accordance herewith in the amount and in the manner hereinafter specified. Upon expiration or termination of this Agreement, Service Provider shall remain entitled to the remuneration earned therefrom, but for which it has not yet been paid

4.2 In consideration for its performance of the Approved Services, VVV shall pay Service Provider the fees (the "Fee") as set out in Annexure "B" attached hereto. VVV shall not pay any amounts over and above than those stated in Annexure B to the Service Provider, including any reimbursement of expenses, unless the Service Provider has obtained the prior approval for incurring such expenses and submits an appropriate invoice for reimbursement of the same

Assuming that the Agreement is still in effect (although we have not received any further notice of continuation or renewal), the agreement would need to be terminated with prior notice. The Service Provider can decide to terminate the agreement before entering into the new service model Agreement. It is their independent administrative decision that we believe would not hamper either party in terms of the continuance of their functions. Otherwise, the terms of the agreement could be amended as well rather than terminated as a whole and settle the separation benefits.

2. ***Whether there is any obligation on the part of the Company to consider the 3rd Party Employees as a full-time employee of the Company and be liable to pay end service benefits if demanded by such employees, with respect to Rule 17 of the Bangladesh Labour Rules 2015? Whether this can be minimised or mitigated by entering into a Service Agreement for services as being contemplated?***

Considering the Bangladesh EPZ Labour Laws (since VVV Bangladesh is a company in an Export Processing Zone or a Zone under the Bangladesh EPZs Authority), the Act of 2019 provides a definition of ‘worker’ in Section 2, clause 48:

“worker” means any adult person (including an apprentice) employed in any industry other than employer who is employed in any industry of any Zone directly, or in any other way, to do any skilled, unskilled, manual, technical or clerical work for hire or reward, whether the terms of employment are expressed or implied, but does not include Chief Executive Officer, any person engaged to perform the executive or administrative duties or any person liable to the employer for supervising and controlling of that industry

And the same Section at clause 36 defined an employer:

“employer” in relation to any industry, means any person or body of persons who employs workers therein, and also includes the following persons:

- (a) any heir, successor in assignment or legal representative of such person;*
- (b) any person responsible for managing or controlling of that industry;*

The definitions themselves are a very broad interpretation of the two terminologies. It does not demonstrate the purview in which the Company is obligated to consider the Service Providing employees as its full-time employees or, if subsequently, liable to provide end service benefits to them. And if we do consider Rule 17 of the Bangladesh Labour Rules 2015, it states:

Special security fund for workers. - (1) Every contracting agency within six months of issuance of their license shall have to open a bank account with a scheduled bank titled the “Workers Social Welfare Fund” along with the name of the agency.

(2) In the bank account, for every worker, employed in the contracting agency and supplied in different establishment, an amount of money equivalent to one month’s basic salary or gratuity (if applicable) in accordance with Section 2(10) shall have to be deposited as compensation for the whole year; which can only be paid directly to the worker for any type of termination of his employment or as a part of payment of gratuity money through check.

(3) The Government shall issue necessary directions for opening and maintain accounts in the scheduled bank.

It is the responsibility of the contracting agency or service provider who supplies workers to different organizations in different posts, to manage the welfare fund not of the Company, VVV.

Additionally, if we look into the Agreement itself, it guides and ultimately determines interpretive methodology. As per Clause 3.1, ***VVV and Service Provider are independent contracting parties hereto and neither shall be deemed to be the agent or employee of the other.***

Hence, VVV is not liable to fulfil any obligations as an employer of the 3rd Party employees, nor are they considered an employee of VVV, and similarly, it is not possible to be a full-time employee. Instead, from the definition of the ‘employer’ under the Bangladesh EPZ Labour Act 2019, 2(36) (b), it is apparent that the person responsible for managing the 3rd Party Employees is the Service Provider, E-Zone HRM Ltd. themselves, who are directly coordinating with, managing and controlling them since date. With that being said, the workers are the first and foremost priority of the Service Providers, who themselves will receive the pending remunerations from VVV but not their employees since they are not the liability of VVV.

Since the workers cannot demand end service benefits from VVV regardless of VVV entering into the new Service Agreement, the concern ends here. It needs not to be stipulated for mitigating or minimising by entering into the Agreement. VVV has no responsibility towards them in terms of providing them with service-related benefits. It is only to be dealt with the agency providing the employees which, if they do not provide, the Court may recover the money from the employer as per Section 137 of the Labour Act 2006 when the Labour Court or the Tribunal is unable to recover any money, ordered to be paid, from any other person responsible for the payment of wages under section 121.

We trust the above will suffice for your present purpose. Should you need any further assistance or clarification, please do not hesitate to contact us.

Thanking you,

Yours Sincerely,
For LAW FIRM

LAWYER

Barrister-at-Law

Advocate, Supreme Court of Bangladesh

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Table of Contents

<i>Ensuring a ‘Tomorrow’: The International Environmental Court</i>	2
<i>Abstract</i>	2
<i>Introduction</i>	2
<i>Specialties of the proposed Court</i>	4
<i>Possible limitations & subsequent recommendations</i>	7
<i>Conclusion</i>	10
<i>References/Bibliography</i>	11

Ensuring a 'Tomorrow': The International Environmental Court

Sayere Nazabi Sayem

North South University, Bangladesh

Email: sayere.sayem@northsouth.edu

Abstract

The core purpose of the paper is to create a measure of accountability for the man-made factors worsening environmental degradation through the formation of an international court. An independent and specialized court that would criminalize acts against the environment by weighing intricate geographical data and their biological, economic, and social implications in the nearby surroundings. With the likeness of the Rome Statute of the International Criminal Court (ICC), the elements of the crime of the International Environmental Court (IEC) can be quantified with the environmentally damaging factors of different acts by states or individuals. Additionally, the court would ensure that countries pay off and receive their due carbon taxes in exchange for greenhouse gas (GHG) emissions; provide reparations to the affected individuals by the governments; cease environmentally damaging activities, implement international environmental laws, and so on. On the contrary, the court would reserve the right to administer sanctions and order the imprisonment of state officials. Although several environmental treaties have been put into order for decades, their implementation by existing courts has not been noteworthy. Even though the proposition is drafted in a futuristic manner, the author attempts to portray the pragmatism of the insights in the paper. The structure of the Court, with its distinct feature of 'compulsory' jurisdiction, will be further explored. The paper will examine the mandates of the court in bridging the existing gaps of environmental conservation and its possible limitations, and finally, it will conclude with recommendations for its establishment to ensure better conservation of nature for future generations to come.

Keywords: international environmental law, international court, jurisdiction, climate change, environmental conservation

Introduction

It has now become a gospel truth that environmental conservation is necessary in order to survive. It is an essential state interest and an emerging *jus cogens* norm as stipulated in Article 64 of the Vienna Convention on the Law of Treaties, 1969; also evidenced by a wide range of state practices and binding *opinion juris* acts such as the Rio Declaration and the Paris Agreement (Islam & Sayem, 2025). Also, if we look at the Pulp Mills¹ case, the status of the 'no harm principle' of the environment and the 'essential interest' of its protection as a common concern of mankind has been rightfully emphasized

¹ Pulp Mills on the River Uruguay (Argentina v. Uruguay)

by the International Court of Justice (ICJ) (ICJ Reports, 2006, at 113). But who would ensure that states and non-state parties are indeed complying with the aforementioned principles? Which entity would hold them accountable if they do not? With the existence of the ICJ or the World Court, the answer might be straightforward (barring its inability to judge non-state parties). Given its history of adjudicating environmental cases, the capacity, efficacy and legitimacy may not be sufficient. As per the 2023 Synthesis Report of the Intergovernmental Panel on Climate Change (IPCC) Sixth Assessment Report (AR6), “every increment of global warming will intensify multiple and concurrent hazards (high confidence)” (IPCC, 2023). With evident heat waves, ice depletions, and more apparent physical risks, there remain economic risks, too - which eventually gave rise to the net zero emission plan by 2050, where countries have to strategically stop emitting carbon in the atmosphere to limit the global temperature rise to below 1.5 degrees Celsius (Intergovernmental Panel on Climate Change, n.d.). If states were to collectively meet this certain target, they need a feasible and effective form of accountability too. With the voluntary jurisdiction² of the ICJ, hesitation of states to label a dispute as ‘environmental’ and reluctance to appear before the Court³, there should be stronger alternatives. Since the issues at hand are time-sensitive (they must be mitigated within the foreseeable future, such as achieving net zero emissions by 2050), they need to be addressed promptly and effectively to ensure a sustainable future. The court would handle transboundary environmental disputes, look out for the violation of related binding conventions, preside on submitted cases or provide advisory opinions to help interpret laws, punish states upon failure to contribute to the Nationally Determined Contributions (NDCs), ensure timely payments of carbon tax to the victim nations and so on. International environmental issues are known to be the ‘abuse of common resources, transboundary pollution, activities that affect large areas encompassing several states, and local but widely shared issues (because they happen simultaneously in various countries or due to general interest in addressing them) (Speth & Haas, 2006). The possibilities are endless, but the decisions would have to be assertive or legally binding in nature. For ages, the weak and aspirational language, along with the lack of concrete

² Article 36(1), Statute of the International Court of Justice; although the Court does comprise of a compulsory jurisdiction as per Article 36, paragraphs 2-5 of the Statute where states may declare that they recognize the jurisdiction *ipso facto*, however, the cases are mostly limited to (a) the interpretation of a treaty; (b) any question of international law; (c) the existence of any fact which, if established, would constitute a breach of an international obligation; (d) the nature or extent of the reparation to be made for the breach of an international obligation. Such cases are brought before the Court by means of written applications. This would not suffice for environmental disputes that require very specific approaches and a stricter jurisdiction that states would be compelled to oblige to. The compulsory jurisdiction (through declarations) is not what is intended for the IEC.

³ It can be well presumed from the inactivity of the Chamber for Environmental Matters by the International Court of Justice (ICJ) that was created in 1993 to work on particular interests of environmental matters. It had zero by states in the course of its lifetime, before eventually disbanding in 2006. Although the ICJ has on its own dealt with several environmental matters, for example, rendering its first ever decision on environmental damage and compensation in the case of *Certain Activities Carried Out By Nicaragua In the Border Area (Costa Rica v. Nicaragua) Compensation Owed By The Republic Of Nicaragua To The Republic Of Costa Rica* in 2018, ordering Nicaragua to compensate Costa Rica for reparation. However, the developments are not prompt enough. The Court deals with almost every kind of issue which takes away its specialization in environmental matters hence the futuristic Court requires specialized proceedings (further explored ahead).

commitment, remained deeply problematic given the climate emergency and the urgent need for climate justice in environmental dispute decisions. The Court could impose sanctions, order compensations, and take other remedial measures to address the profound degradation of the environment and restore the ecosystem.

Specialties of the proposed Court

Most scholars to date have discussed the necessity of the futuristic court but not the possible frameworks the Court would comprise of, some also worried about its vast jurisdiction and how it would be difficult to tackle this concern (Pedersen, 2012; Hinde, 2003). There remains another group of scholars who in a way believe that the ICJ is equipped enough to litigate such disputes (Viñuales, 2008).

Formerly, a blueprint of this possible court was provided by ICE Coalition, it too explored the compulsory jurisdiction of the court and its possible sources of funding (Riches & Bruce, 2013). But what sets this paper apart is the exploration of additional specialties of the Court that could be added to the blueprint of the probable court, alongside the possible implications of doing so. Over time, the author believes that more characteristics will be added to legal scholarship, as people gradually, if not immediately, come to understand the importance of forming an IEC. With varying opinions and suggestions, the court's framework will be strengthened, paving the way for a potential formulation in the near future.

Through a centralized platform, the court would ensure accountability by allowing both state and non-state parties (e.g. organizations and individuals) to present their matters before this court. Apart from the ICJ, the International Tribunal for the Law of the Sea (ITLOS)⁴, or the Permanent Court of Arbitration (PCA), the former also does not allow non-state actors to file complaints (as parties), and the latter does so only with consent. The proposed court should also try individuals (perhaps state leaders and heads of business conglomerates guilty of environmental damage) like the ICC.

There is no doubt that the ICJ is the World's court that has been established to maintain relations between states in accordance with international law. While discussing its jurisdictional complexities, Hoque (1999) writes:

In comparison to international courts, municipal courts play a much more important role in a state. If the ICJ has not been a success story, the reasons for this should be attributed to the fluidity of international relations, strict adherence by states to the principle of sovereignty, and diverging socio-economic and cultural patterns of the world society.

Other courts like the European Court of Human Rights, the African Court on Human and Peoples' Rights and the Inter-American Court of Human Rights' (through the Inter-American Commission on Human Rights) endeavours are also commendable in the advancement and spread of international environmental law and adjudication. Although they are not, by definition, universal in reach or in terms

⁴ Although it is only limited to subject matter of issues arising out of the United Nations Convention on the Law of the Sea.

of wide jurisdiction, they currently offer a potential alternative for ‘access to justice’ for individuals in terms of environmental adjudication.

Principles like that of Maastricht on The Human Rights of Future Generations also devote themselves to ensuring an environmentally secure future for the upcoming generations.

If states were to take environmental disputes seriously from the very beginning of the court’s initiation and bring forth the charges before the Court, perhaps its constraints would be lowered to what is apparent today.

In its Advisory Opinion on the *Legality of the Threat of Nuclear Weapons*, the ICJ unanimously stated that “the environment is not an abstraction but represents the living space, the quality of life and the very health of human beings, including generations unborn” (*Threat or Use of Nuclear Weapons* Advisory Opinion, 1996, para. 29). Judge Weeramantry in his dissenting opinion, highlighted that, regarding the environment, the Court (ICJ) must “pay due recognition to the rights of future generations” and noted that “the rights of future generations ... have woven themselves into international law through major treaties, through juristic opinion and through general principles of law recognized by civilized nations” (Advisory Opinion, pp. 233-234). While adding onto his reasoning on ensuring intergenerational justice, he also stated that “[w]hen incontrovertible scientific evidence speaks of pollution of the environment on a scale that spans hundreds of generations, this Court would fail in its trust if it did not take serious notes of the ways in which the distant future is protected by present law.”

One may argue that improving the scope of the ICJ (or any other court per say⁵), it itself can be used to deal with environmental claims, why would this world need another court? However, given the specialization the IEC needs, it would be too tedious and expensive to bring about changes to the existing courts than simply creating a new one. Plus, bringing such drastic and extensive changes to the existing courts may further affect their legitimacy of the previous rulings on related matters or perhaps even impact their image and credibility overall.

Combining the two aforementioned analogies of municipal courts and upholding intergenerational justice, several countries have been wonderful in their endeavours. Researchers from India have discovered the need for specialized environmental court for their domestic disputes (Gupta, 2011). Municipal courts like the Federal Court of Australia issued a landmark judgement when eight teenagers had filed a case (*Sharma by her litigation representative Sister Marie Brigid Arthur v Minister for the Environment*)⁶ against the Environmental Minister of Australia, Sussan Ley for agreeing upon a coal mining extension project, being the world’s first case to rely on common-law principles to establish the duty of care, and so was relevant to other common-law countries including England, the United States and New Zealand (Slezak & Timms, 2022). They argued on the concept of ‘duty of care’ and

⁵ It could be contended that if environmental crimes are dealt with by the Rome Statute (upon possible amendments), the ICC could be used as an environmental court to persecute individuals.

⁶ (No 2) [2021] FCA 774

whether the law will be violated if it fails to prevent carbon emissions that would harm children. Although the appeal was in favour of the minister failing to establish her duty of care to the teenagers, it opens new frontiers for the possibilities of arguing in a similar manner and perhaps seeing light at the end of the tunnel.

Another (almost) successful attempt is by the Court of Hague when it ordered a leading oil company, Shell to cut its carbon emissions by 45 per cent by 2030 (compared to 2019), aiming to make the company align its business plans with Paris Agreement goals (*Milieudefensie et al. v. Royal Dutch Shell plc.*, 2021). Although an appeal is extended by the end of 2024, the order remains and it stands as a testament to the length of measures that municipal courts are taking (Frost, 2024). It is time for an international court to take stricter approaches to ensure that states, businesses, and individuals comply with the obligations. Any action that exasperates climate change needs to be circumvented; it is the duty of the judiciary. Courts are more effective in their respective states for crimes within their jurisdiction, and the obligation of the judiciary now comes down to environmental crimes on international frontiers. While countries have already started to understand the importance of a specialized environmental court in their domestic jurisdictions, it is high time that it is implemented internationally for global issues and matters involving two or more countries.

It is expected that a court dealing with scientific concepts and terminologies related to the environment would need to comprise of a body of experts in environmental science/management like geologists, ecologists, hydrologists, environmental scientists, wildlife biologists, conservation scientists, sustainability consultants, scientific analysts, and so on. If not available at the panel of judges, or further expert supervision/consultation is required, they can be requested to be a part of the panel. Together with legal experts, they can propose solutions or schemes that would either enforce the incarceration of state leaders or individuals guilty of environmental misconduct and/or ensure compensation to the victim(s). However, another reason an IEC is required as opposed to the ICJ handling environmental disputes is because of the lack of its scientific technical data. It is only fair that every field is different, and not everyone is aware of concepts that are limited to other fields of career. In the very first ‘environmental’ case of the ICJ, *Gabčíkovo-Nagymaros Project* (1997), the disinterest of the Court to use scientific information was seen (page 7):

Perhaps the most disappointing aspect of the *Gabčíkovo-Nagymaros* judgment lies in the visible efforts made by the ICJ to circumvent the apparent scientific dimensions of the parties’ conflict regarding the damming of the Danube. The first contentious environmental case decided by the ICJ showcases several judicial maneuvers with which the bench sought to escape evaluating the highly technical party-submitted expert evidence, both at the stage of framing the legal dispute and during its scientific fact-finding procedure.

The judgment marks a shaky start in the ICJ’s history of deciding scientifically-loaded environmental disputes. Unsurprisingly, the decision was met with harsh criticism in contemporaneous scholarship for the many shortcomings in the ICJ’s fact-finding technique and its lack of appreciation of the technical aspects of the case.

The Pulp Mills case was also marred by criticisms for the same reason (Riddell, 2009). The air, noise and visual pollution was considered beyond the scope of the Court. The *Certain Activities/Construction of a Road* (2015) and the *Whaling in the Antarctic* (2014) cases both featured cross-examination allowing the Court to ‘test the credibility and consistency of party-submitted scientific data’ (Sulyok, 2022). In the *Whaling* case, the judges did not give “*carte blanche* acceptance of expert opinions” (Sulyok, 2022; Mangel, 2016). The ICJ unfortunately avoided consideration of overarching environmental principles.

The proposed court needs to follow a holistic approach and understand the nature and temporality of environmental impacts, scientifically. Even an organization like the International Union for Conservation of Nature that is devoted to working on climate change, biodiversity loss and pollution, comprises of approximately 16,000+ volunteer scientists and other experts working for the international union across 160+ countries (IUCN - IUCN expert Commissions, n.d.). The experts make up 7 specialized commissions for performing different tasks of undertaking research and other technical work for their greater enforceability; they assist decision-makers with information, legal analysis, advisory services, legislative drafting, mentoring, and capacity building at national, regional, and global levels (Laur, 2016; Islam & Sayem, 2025). The World’s (Environmental) Court would need to have such a detailed panel of experts if they truly want to make a difference. Hence, the proposition is such that experts from all over the world will be welcomed to work equivalently with the judges of the Bench to ensure it is scientifically sound.

The IEC would serve as a specialized body to ensure compliance with the environmental conventions, agreements and treaties. It could also be formulated with the amalgamation of the existing environmental frameworks to in turn create a new statute for the inception of the Court.

Policy decisions are always a state practice where states themselves stand hesitant to bring environmental disputes to the international front, failing to recognize their gravity. To counteract such blatant issues, the Court may be encompassed with *suo moto* power to have jurisdiction over a dispute. Moreover, individuals and non-state actors can seek justice before this Court, ensuring access to justice and the international environmental rule of law. Here, for the IEC, the jurisdiction is compulsory to fully commit to the "Save the Planet" drive and the Court to uphold the *erga omnes* principles. No country can disregard its jurisdiction.

Possible limitations & subsequent recommendations

One of the main reasons why the ICJ failed to successfully litigate environmental disputes all over the world is because of its state-consented (controlled) jurisdiction.⁷ Countries would be reluctant to cede

⁷ Lawson (1952) states that “[c]ommitments for reference to the Court of certain classes of future disputes might theoretically have been included in the Statutes themselves, and judicial settlement of these disputes thereby made obligatory... This was favored by the Advisory Committee of Jurists in 1920 but rejected by the Council of the League of Nations...there was majority support for the broadening of the compulsory jurisdiction of the Court by making its

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their sovereignty to international bodies that, in a way, limit their interests. They would not be able to do so independently (sans repercussions), moreover considering that different countries have varying priorities regarding environmental protection, with reference to their own development plans. This could also pose a problem of non-compliance by states with the formation of the environmental court. However, this could be counteracted if members of the United Nations are *ipso facto* bound to accept the jurisdiction of the Court concerning its matters – this could be decided through treaty law or perhaps a resolution. States need to understand that the risks associated with environmental degradation are not limited to physical changes but also economic ones.

Global politics and the greater influence of the West (which is also the largest emitter of carbon) may influence the reduction of disputes that may make it to the Court. The financial burden of NDCs on developing countries is already enormous since industrialized nations in the Global North account for the majority of the world's carbon emissions⁸, the countries might hesitate to bring forth additional burdens in terms of costs (discussed in detail in the following section) or by the fear of diplomatic protests and sanctions. They would have to pay a price that they do not deserve. The *suo moto* power of the court may help counteract that, without states having to voluntarily bring in the cases officially.

As a paymaster, the parties have to pay for the litigations and it may not seem much for developed nations, it could develop reluctance on the minds of the developing or underdeveloped nations to even be a part of the court or its foundational treaty at all. With allegations in the past about international courts being too expensive⁹, if the history repeats here too, it could cause more duress than aid

acceptance automatic on adherence to the Statute. Opposition of the United States and the Soviet Union was determining, however”.

⁸ As per Hickel (2020), in 2015, 92% of excess global carbon emissions, United States alone accounted for 40%. A developing country like Bangladesh on the other hand amounted to 0.4% of the contribution, but devastating impacts are posing existential challenges for the country. See also, Sarwar, M. G. (2023, December 21). COP28 outcome: The road (not taken) towards a fossil-free future. *The Daily Star*. <https://www.thedailystar.net/opinion/views/news/cop28-outcome-the-road-not-taken-towards-fossil-free-future-3499161>), accessed May 21, 2024.

⁹ See also Silverman, J. (2012, March 14). Ten years, \$900m, one verdict: Does the ICC cost too much? *BBC News*. Retrieved October 11, 2024, from <https://www.bbc.com/news/magazine-17351946>, which stipulates how cost is indeed a great issue for litigations where courts like ICC since its inception, spent around \$900m. The annual budget for the International Criminal Tribunal for the former Yugoslavia has gone up 500-fold since it began life in 1993. The International Criminal Tribunal for Rwanda budget for 2010-2011 was \$257m. As opposed to the humongous costs and expenditure, it has completed about 50 trials since 1994. More recently, South Africa spent about 1.96 million South African Rand in the proceedings instituted by the government against Israel before ICJ. (See, Neethling, 2024).

(Romano, 2005). Particularly, being resource-heavy with specialists, with a decent infrastructure, and dealing with complex issues, the court would be expensive to maintain. If members are not helpful enough with funding, the plan could be jeopardized. Hence, compulsion becomes necessary (even if it sounds unpleasant with context to state sovereignty) to fund the court if it means to ensure the rule of law. The NDC budget could also be administered in the litigation proceedings since it is, after all, meant to help reduce emissions and tackle its existing effects. Another possibility could be the use of alternative dispute resolution or outside court settlements as well to reduce the cost of formalities of a traditional court proceeding.

Considering there is a plethora of environmental conventions and laws, disputes could arise on what will be followed by the Court. This could be tackled with the formation of a new treaty that forms the Court (similar to the Rome Statute) and discusses the elements of the possible crimes on land, water and air. Since environmental laws all vary in nature, the treaty would need to reach a common consensus. It could be an amalgamation of the existing principles, laws and directives (whatever seems appropriate) to the panel of expert drafters, who would be hand-picked based on their interests and expertise similar to the bench of judges. The authoritative alliance body would need to be formed first, which would then constitute the drafters of the instrument to finally select judges (including environment experts), lawyers and court officers.

Speaking of ICC, with the presence of numerous international bodies and courts, there is a risk of overlapping of procedural functions and jurisdictions, particularly with that of the ICJ, or even ITLOS and PCA. And the variety of existing courts try resolve matters through various areas that are simultaneously political, diplomatic, quasi-judicial, and judicial. There remains not one international court with universal jurisdiction that focuses exclusively on environmental concerns. However, these methods have been continuously challenged for their shortcomings, since they are not sufficiently prepared to handle the unique requirements of global environmental protection, at least in their current configuration (Stephens, 2009).¹⁰ From prior arguments, this has been demonstrated how imperative IEC is today. With the formation of a specialized court dealing solely with transboundary environmental conflicts, I think this problem can be avoided. If parties file similar cases here, other courts will not accept them but rather redirect cases to the IEC, the court would gradually receive its recognition and credibility.

Environmental concerns are everywhere around us and from the smallest of the area, complaints of environmental degradation can be found. This might raise concerns of overflowing complaints and litigations. To avoid the obstacle of overflowing case works and backlog of cases which would again impact the speed of proceedings like other courts of similar manner, the jurisdiction could start by focusing on the most crucial problems of the time being, that are at the risk of escalating even further or have no possibility of stopping so until the root cause is dealt with. For dealing with matters of emergency e.g. air quality worsening than 200 Air Quality Index (AQI) would need to be mitigated quicker than perhaps that of a city with perhaps a 100 AQI because the unhealthy air quality at that

instance would have a great chance of worsening and becoming very unhealthy and potentially, cause several diseases.¹¹ However, a moderate air quality region would have a reasonable span of time before endangering humans, unless something disastrous occurs instantaneously. An international court with particular jurisdiction over environmental issues may provide an effective conflict resolution system that takes into account the nature of the same rights it seeks to safeguard (Stephens, 2009).¹² The strength of the court is its specialized approach that would help suppress the possible escalations of environmental degradations.

Another obstacle that the IEC may face is when states use the veil of the administrative power or mandate of the government, labelling it as a policy issue in a case¹³. The instrument of the court would need to clarify as much as possible the scopes of the court and when *erga omnes* obligations with context to the conservation of the environment would supersede all forms of domestic administrative powers. Considering the necessity in this time and age, it should be done.

The court has several challenges to overcome, such as not ruling judgements that feel inclined and supportive towards monetary and political interests but solely towards avoiding environmental degradation. However, that cannot also overlook economic interests completely. The decisions have to be conscious and pragmatic, otherwise this scare would also deter states even more and cause protests.

The environmental and legal specialist judges may face difficulties in cooperating in an alien structure as opposed to traditional concepts of an international court structure, particularly when both the ends do not have much idea about the other ends' field of expertise. Various technical scientific terms may be difficult to interpret legally and adjudge accordingly, more so if the concept is undergoing experiments and developing. However, everything starts with unfamiliarity and could instead mark the beginning of an incredible creation.

Conclusion

Although it is a vast concept and can have several different opinions as to what would be required in the formation of the court, this paper remarks the views of the author and with time modifications to the proposals are possible with time, given that the changes to the environment are ever-evolving and would require varying attentions. Although domestic courts are effective, victims of transboundary

¹¹ 151 to 200 AQI being in the range of 'Unhealthy'; 201 to 300 being 'Very unhealthy air quality that may cause widespread effects for the general population and more serious effects for sensitive groups' and 301 to 500 being 'Hazardous air quality'. Whereas, 51-100 denote as Moderate.

For a more vivid comparison, it can be presumed at that the condition of Dhaka (over 200 AQI as of December, 2024) would be of greater importance or require quicker response than New York air (AQI below 100 as of December, 2024) where people are getting sicker in the former (World Bank Group, 2022). Holding the regulatory bodies accountable through the court and suggestions from the expert panel would help minimize the risks.

¹² Lehmen (2015) also discusses how important IEC is in resolving disputes between both states and non-state parties as plaintiff and defendant.

¹³ The Minister of Environment argued and the Chief Justice of Australia reaffirmed that the only reason the "duty of care" ruling would stand is when there would need to be changes made to the government policy and that the matter should be left to the government itself, not the courts.

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environmental contamination have little chance of success and a short window of time to file a suit against a foreign polluter, a foreign polluter-state or its branches. The appropriate organization for monitoring the implementation of international rules established by environmental treaties would be an international instrument, such as an international environmental court. Having a court or a permanent body to look over the changes and the developments of international environmental law and interpret it would ameliorate the redress faced by distraught countries facing climate calamities. Notably, an international court would offer standing to state as well as non-state actors, keeping intact the principles of "access to justice" and *erga omnes* obligations in enforcing international environmental law.

References/Bibliography:

- ABC Radio National. (2021, July 13). *Climate change litigation*. Retrieved October 8, 2024, from <https://www.abc.net.au/listen/programs/lawreport/climate-change-litigation-and-climate-as-financial-risk/13421608>
- Bodansky, D., Brunnée, J., & Hey, E. (2008). The Oxford Handbook of International Environmental Law. In *Oxford University Press eBooks*.
<https://doi.org/10.1093/oxfordhb/9780199552153.001.0001>
- Case concerning the Gabčíkovo-Nagymaros Project (Hungary v Slovakia)*, Judgment, ICJ Reports 1997 *Certain Activities Carried Out By Nicaragua In the Border Area (Costa Rica v. Nicaragua) Compensation Owed By The Republic Of Nicaragua To The Republic Of Costa Rica*, Judgment, ICJ Reports 2016 *Certain Activities carried out by Nicaragua in the Border Area (Costa Rica v Nicaragua)* and *Construction of a Road in Costa Rica along the San Juan River (Nicaragua v Costa Rica)*, Judgment, ICJ Reports 2015 Dupuy, P., & Viñuales, J. E. (2018). *International Environmental Law*.
<https://doi.org/10.1017/9781108399821>
- Francioni, F. (2010). International human rights in an environmental horizon. *European Journal of International Law*, 21(1), 41–55.
<https://doi.org/10.1093/ejil/chq019>
- Frost, R. (2024, April 3). Shell appeals Dutch court’s landmark climate ruling forcing it to slash emissions. *Euronews*. <https://www.euronews.com/green/2024/04/02/shell-is-appealing-a-landmark-climate-ruling-ordering-the-oil-and-gas-giant-to-cut-emissio>, accessed June 23, 2024.
- Gupta, A., & Mason, M. (2014). Transparency in global environmental governance. In *The MIT Press eBooks*.
<https://doi.org/10.7551/mitpress/9780262027410.001.0001>
- Gupta, K. S. (2011). “The role of Judiciary in Promoting sustainable development: Need of specialized Environment Court in India”. *Journal of Sustainable Development*,
<https://doi.org/10.5539/jsd.v4n2p249>

- Hernandez, G. I. (2013). A reluctant guardian: the International Court of Justice and the concept of “International Community.” *British Yearbook of International Law*, 83(1), 13–60.
<https://doi.org/10.1093/bybil/brt003>
- Hickel, J. (2020). Quantifying national responsibility for climate breakdown: an equality-based attribution approach for carbon dioxide emissions in excess of the planetary boundary. *The Lancet Planetary Health*, 4(9), e399–e404.
[https://doi.org/10.1016/s2542-5196\(20\)30196-0](https://doi.org/10.1016/s2542-5196(20)30196-0)
- Hinde, S. M. (2003). The International Environmental Court: its broad jurisdiction as a possible fatal flaw. *Hofstra Law Review*, 32(2), 5.
<http://scholarlycommons.law.hofstra.edu/cgi/viewcontent.cgi?article=2575&context=hlr>
- Hoque, R. (1999). JURISDICTIONAL PROBLEMS OF THE INTERNATIONAL COURT OF JUSTICE: TOWARDS AN ALTERNATIVE FRAMEWORK? *Bangladesh Journal of Law*, 3(1), 49.
<https://www.biliabd.org/wp-content/uploads/2021/08/Ridwanul-Hoque.pdf>
- Intergovernmental Panel on Climate Change (IPCC), AR6, Synthesis Report: Summary for Policymakers (2023)
- Intergovernmental Panel on Climate Change (IPCC). (n.d.). Global warming of 1.5 oC —. In *Ipcc*.
<https://www.ipcc.ch/sr15/>, accessed March 3, 2024.
- Islam, M. R., & Sayem, S. N. (2024). IUCN’s Amicus Curiae Submission in the Climate Change Advisory Opinion: Wind of Changing Practice at the ICJ? *The International Lawyer*, 57. *IUCN expert Commissions*, IUCN, <https://www.iucn.org/our-union/expert-commissions>, accessed July 20, 2024.
- Lapshina, I., & Dudchenko, A. (2019). International Legal Regulation of Environment Impact Assessment: Problems and Prospects. *Proceedings of the 2nd International Conference on Contemporary Education, Social Sciences and Ecological Studies (CESSSES 2019)*.
<https://doi.org/10.2991/cessses-19.2019.121>
- Lapshina, I., & Dudchenko, A. (2019). International Legal Regulation of Environment Impact Assessment: Problems and Prospects. *Proceedings of the 2nd International Conference on Contemporary Education, Social Sciences and Ecological Studies (CESSSES 2019)*.
<https://doi.org/10.2991/cessses-19.2019.121>
- Laur, A., Li, N., & Pacheco-Fabig, M. (2016). 19. International Union for Conservation of Nature (IUCN). *Yearbook of International Environmental Law*, 27, 515–536.
<https://doi.org/10.1093/yiel/yvx072>
- Lawrence, P. (2016). An atmospheric trust to protect the environment for future generations? In *Routledge eBooks* (pp. 25–39). <https://doi.org/10.4324/9781315665320-3>
- Lawson, R. C. (1952). The problem of the compulsory jurisdiction of the World Court. *American Journal of International Law*, 46(2), 219–238. <https://doi.org/10.2307/2194059>
- Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, ICJ Reports 1996
- Lehmen, A. (2015). The Case for the Creation of an International Environmental Court: Non-State Actors and International Environmental Dispute Resolution. *Colorado Natural Resources*, © The author 2025. Published by the Center for Peace Studies (CPS) North South University, Dhaka, Bangladesh

Energy, & Environmental Law Review, 26(2), 179.

[https://www.academia.edu/14886084/The Case for the Creation of an International Environmental Court Non State Actors and International Environmental Dispute Resolution](https://www.academia.edu/14886084/The_Case_for_the_Creation_of_an_International_Environmental_Court_Non_State_Actors_and_International_Environmental_Dispute_Resolution)

Llamzon, A. P. (2007). Jurisdiction and compliance in recent decisions of the International Court of Justice. *European Journal of International Law*, 18(5), 815–852.
<https://doi.org/10.1093/ejil/chm047>

Maastricht Principles on The Human Rights of Future Generations, 2023

Mangel, M. (2016). Whales, science, and scientific whaling in the International Court of Justice. *Proceedings of the National Academy of Sciences*, 113(51), 14523–14527.
<https://doi.org/10.1073/pnas.1604988113>

McCallion, K. F., & Sharma, H. R. (2000). Environmental Justice without Borders: The Need for an International Court of the Environment to Protect Fundamental Environmental Rights. *Asia Pacific Journal of Environmental Law*, 32(3), 351.
<https://www.questia.com/library/journal/1P3-64800353/environmental-justice-without-borders-the-need-for>

Milieudefensie et al. v. Royal Dutch Shell plc. (2019)

Neethling, B. (2024, May 3). South Africa's ICJ Israel case cost millions. *Daily Investor*.
<https://dailyinvestor.com/south-africa/50487/south-africas-icj-israel-case-cost-millions/>

Pedersen, O. W. (2012). An international environmental court and international legalism. *Journal of Environmental Law*, 24(3), 547–558. <https://doi.org/10.1093/jel/eqs022>
Pulp Mills on the River Uruguay (Argentina v. Uruguay), Provisional Measures, Order, ICJ Reports 2006

Riches, P., & Bruce, S. A. (2013). Brief 7: Building an International Court for the Environment: A Conceptual Framework. *Governance and Sustainability Issue Brief Series*, 7.
https://scholarworks.umb.edu/cgi/viewcontent.cgi?article=1006&context=cgs_issue_brief_series

Riddell, A. (2011). Scientific Evidence in the International Court of Justice – Problems and Possibilities. *Finnish Yearbook of International Law*, 20.

Romano, C. (2005). The price of international justice. *The Law and Practice of International Courts and Tribunals*, 4(2), 281–328. <https://doi.org/10.1163/1571803054515311>

Sarwar, M. G. (2023, December 21). COP28 outcome: The road (not taken) towards a fossil-free future. *The Daily Star*. <https://www.thedailystar.net/opinion/views/news/cop28-outcome-the-road-not-taken-towards-fossil-free-future-3499161>, accessed May 21, 2024.

Scientific evidence in the International Court of Justice – Problems and possibilities. (2014). In *Hart Publishing eBooks*. <https://doi.org/10.5040/9781472565716.ch-011>

Sharma by her litigation representative Sister Marie Brigid Arthur v Minister for the Environment (No 2) [2021] FCA 774

- Siew, J. G. (2020). Facing the Future: The Case for A Right to a Healthy Environment for Future Generations under International Law. *Groningen Journal of International Law*, 8(1), 30–47. <https://doi.org/10.21827/groji.8.1.30-47>
- Silverman, J. (2012, March 14). Ten years, \$900m, one verdict: Does the ICC cost too much? *BBC News*. Retrieved October 11, 2024, from <https://www.bbc.com/news/magazine-17351946>
- Slezak, M., & Timms, P. (2022, March 15). Children’s climate change case overturned on appeal as Federal Court dismisses government’s “duty of care.” *ABC News*. <https://www.abc.net.au/news/2022-03-15/federal-court-judgement-on-climate-change-government-doc/100909214>, accessed May 13, 2024.
- Speth, J. G., & Haas, P. M. (2007). Global environmental governance. *Choice Reviews Online*, 44(05), 44–2947. <https://doi.org/10.5860/choice.44-2947>
- Speth, J.G. and Haas, P.M. (2006). *Global Environmental Governance*. Washington DC: Island Press.
- Statute of the International Court of Justice, 1945
- Stephens, T. (2009). *International courts and environmental protection*. <https://doi.org/10.1017/cbo9780511576034>
- The Rome Statute of the International Criminal Court, 1998
- Vienna Convention on the Law of Treaties (1969)
- Viñuales, J. E. (2008). The contribution of the International Court of Justice to the development of International Environmental Law: a contemporary assessment. *Fordham International Law Journal*, 32(1), 232. <https://www.corteidh.or.cr/tablas/R22141.pdf>
- Whaling in the Antarctic (Australia v Japan: New Zealand intervening)*, Judgment, ICJ Reports 2014
- World Bank Group. (2022, December 4). High Air Pollution Level is Creating Physical and Mental Health Hazards in Bangladesh: World Bank. *World Bank*. <https://www.worldbank.org/en/news/press-release/2022/12/03/high-air-pollution-level-is-creating-physical-and-mental-health-hazards-in-bangladesh-world-bank>, accessed December 20, 2024)