



Inter-American Congress on the **Environmental Rule of Law**

Summary of Proceedings and Key Messages



Organization of
American States







Overview

The Organization of American States (OAS), the United Nations Environment Program (UNEP), the International Union for the Conservation of Nature World Commission on Environmental Law (IUCN-WCEL) and the Caribbean Court of Justice partnered in facilitating the first **Inter-American Congress on the Environmental Rule of Law** that took place in Montego Bay, Jamaica on 30-31 March 2015.

The two-day event, brought more than 100 participants, including Chief Justices, Attorneys General, legislators, prosecutors, government officials, high level practitioners and civil society representatives to develop a common understanding of the concept of environmental rule of law and identify current trends in the field in order to respond to the need to intensify Inter-American efforts to identify inclusive responses to the challenges related to environmental law and governance.

The focus of the Congress was thematic and procedural under the umbrella of the environmental rule of law.

The Congress was divided into sessions that addressed the following themes:

- ***Legal Frameworks for Water Resource Management***
- ***Trade, Investment and Environment***
- ***Conflict Prevention and Management in Shared Natural Resources***
- ***Environmental Enforcement***
- ***Access Rights: Information, Justice and Process***

Each thematic session had a High level expert that served as Session Chair and four (4) speakers that presented selected [articles](#) prepared especially for the Congress. In addition to the thematic sessions, a session for dialogue and exchange amongst stakeholders was included in the schedule. This session was divided into 6 working groups (one per stakeholder category) and each group had a High Level expert as Chair lead the discussions through questions linked to the congress five (5) thematic sessions.

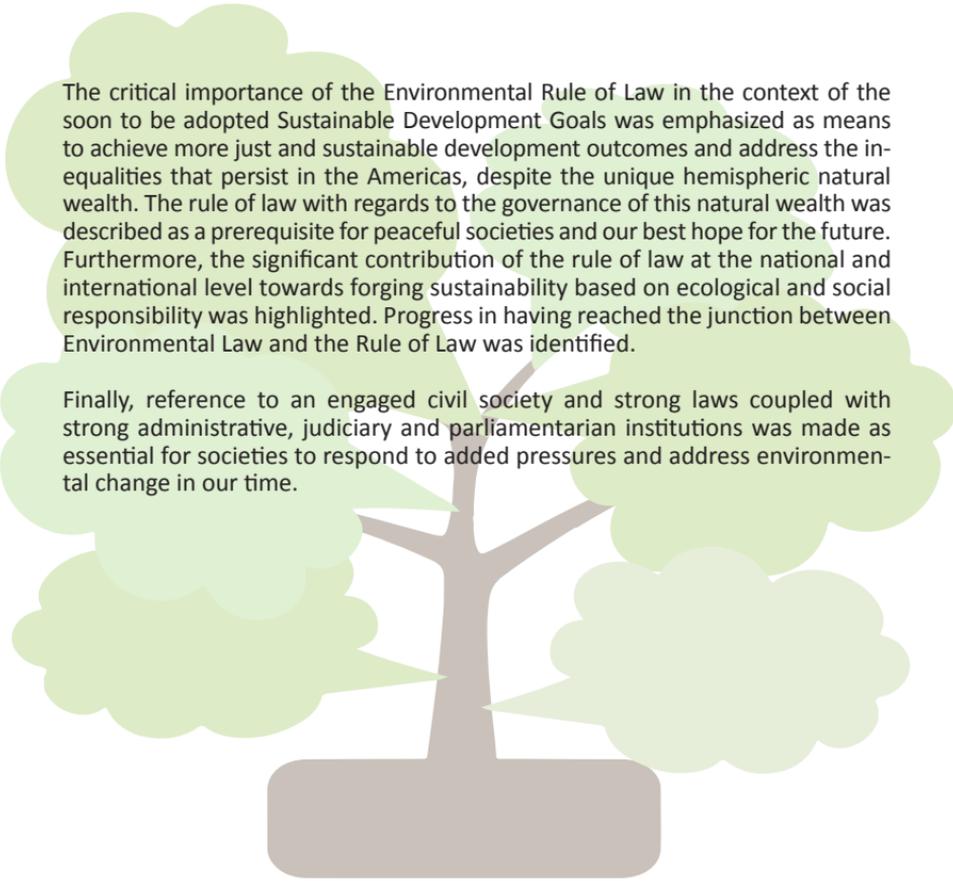
During the final plenary session, the different stakeholders' represented, highlighted the need to advance the rule of law to address environmental challenges in the Americas. They also urged for the environmental rule of law to be included in the OAS Sustainable Development agenda and for the Organization and its partners to continue holding the Congress on a periodical basis as a common space for exchange of information and experiences amongst the judiciary, the executive and the legislative.





The following authorities addressed the Congress during the opening session:

- *The Honorable Robert Dixon Pickersgill, MP Minister of Water Land Environment and Climate Change, Jamaica*
- *The Honorable Mrs. Chief Justice Zaila Rowena McCalla, OJ, Chief Justice of Jamaica*
- *Madam Elizabeth Mrema, UNEP Director Environmental Law and Conventions*
- *The Honorable Justice Antonio H. Benjamin, High Court of Brazil, Chair WCEL-IUCN*
- *The Right Honorable Sir Charles Michael Dennis Byron, President Caribbean Court of Justice*
- *H.E. Albert Ramdin, Assistant Secretary General of the Organization of American States*



The critical importance of the Environmental Rule of Law in the context of the soon to be adopted Sustainable Development Goals was emphasized as means to achieve more just and sustainable development outcomes and address the inequalities that persist in the Americas, despite the unique hemispheric natural wealth. The rule of law with regards to the governance of this natural wealth was described as a prerequisite for peaceful societies and our best hope for the future. Furthermore, the significant contribution of the rule of law at the national and international level towards forging sustainability based on ecological and social responsibility was highlighted. Progress in having reached the junction between Environmental Law and the Rule of Law was identified.

Finally, reference to an engaged civil society and strong laws coupled with strong administrative, judiciary and parliamentary institutions was made as essential for societies to respond to added pressures and address environmental change in our time.



“Your cooperation programs give solid technical and financial support that has allowed us to increase our capacity in key sectors, including environment, energy, science technology, social inclusion and ecosystem management. The OAS is essential to integration; You are the prime political forum that allows us to engage with other Members States on issues of importance as those addressed in this Congress”.

During her keynote address, the Most Honorable Portia Simpson Miller, Prime Minister of Jamaica stressed the relevance of having further debates on effective environmental governance in a Small Island Developing State (SIDS) given for SIDS achieving Sustainable Development is an extreme challenge. Furthermore the Prime Minister recognized the strong partnership of Jamaica with the Organization of American States and UNEP and the strategic alliance amongst these two organizations.

The keynote address focused on the role of the congress in strengthening environmental governance within the region and the jurisdictions represented towards achievement of the Sustainable Development Goals by finding common ground within the diversity of the Hemisphere.



OAS and Supreme Court of Argentina sign historic Agreement in Jamaica

In the presence of the Most Honorable Prime Minister of Jamaica and more than a 100 Chief Justices, Parliamentarians, Prosecutors and experts in Environmental Law, an agreement between the Supreme Court of Argentina and the Organization of American States to strengthen the capacity of the Judiciary on environmental matters was signed. His Excellency Ambassador Ramdin thanked The Honorable Chief Justice of Argentina, The Honorable Dr. Ricardo Luis Lorenzetti for the trust placed in the OAS and its partners.

Thematic Sessions

The Congress was divided in sessions that addressed the following themes:

1. **Legal Frameworks for Water Resource Management**

Chair: Luis Fernando Macias, Partner Macias Gomez & Associates



Session overview: Water resources management was addressed from different perspectives during this session and throughout the presented papers. The first perspective focused on the need for common approaches for management of transboundary water resources.

Further the human right to water was discussed followed by the tensions in the context of water management and mining. The session concluded with the role of the judiciary in water policy Development.

Selected and presented papers:

- *International Water Law in Latin America: A critical assessment of existing agreements for improved governance, Alejandro Iza, Juan Carlos Sanchez, Antonio Razeto Cáceres;*
- *Scope of the Human Right to Water and Sanitation in the Context of IWRM, Lilliana Arrieta Quesada;*
- *Water Protection and Mining: Environmental Law Challenges in the Andean Region, Carlos Lozano Acosta;*
- *The Judge's Boundaries in Deciding Water Access Rights, Amb. María del Luján Flores and Carlos Sapriza Flores;*

2. **Trade, Investment and Environment**

Chair: *The Honourable Mr. Justice Winston Anderson, Caribbean Court of Justice*



Session overview: This session recognized that trade, investment and the environment represent important development drivers, but also complex subjects in the decision-making process. Panelists discussed the trends regarding sustainability in investment, linkages

with climate change law and policy, and supporting environmental compliance by using market based instruments and planning tools as well as challenges regarding Environmental Impact Assessment. Questions of access rights and decision-making in both national and global dimensions were examined in the context of investment and trade. While the Americas continues to support economic integration and enjoys the benefits of globalization, the role of jurisprudence and the principles of environmental governance are key in order to ensure that economic growth goes in tandem with environmental sustainability.

Selected and presented papers:

- *The Flexibility of the Rules: Environmental Legislation in Times of Economic Slowdown and Crisis, Martha Aldana;*
- *Challenges in Environmental Impact Assessments, Nestor Cafferatta, Federico Zonis, Lorena Gonzales and Pablo Lorenzetti;*
- *Investment and Access Rights: Water Usage Decision-Making: the public right to challenge decisions apparently taken to promote energy related investment, Alejandro Posadas;*
- *The role of international investment and trade within the context of sustainable development; Ms. Andrea Jacobs1;*

1 Ms. Jacobs presented in place of absent selected author Ms. Marcia Edwards Oakley Trade, Investment and Environment: challenges in Today's Cuba

3. ***Conflict Prevention and Management in Shared Natural Resources***
Chair: Ricardo Saucedo, OAS Environmental Law Advisory Group



Session overview: This session highlighted that innovative schemes in the management of shared resources and tools for conflict prevention should be considered key components to physical coexistence and the sustainable development of our planet. The session emphasized that the real challenge is that common resources

are difficult to manage (the “commons”), and progressive development of international law and adequate frameworks for addressing conflicts are required. Participants shared their thoughts on the collective responsibility of shared natural resources, such as sound marine resource management. The complexity of cases involving activities such as those related to extractive industries, were also discussed, as often more controversial given the linkages to human rights, such as health, life, water and healthy environment. The role of parliaments in oversight regarding environmental compliance and conflict was also addressed.

Selected and presented Papers:

- *Collective Responsibility for Sound Marine Resource Management, Prof. Cymie R. Payne;*
- *Strategic Environmental Assessment: The role of the Judiciary in its Implementation, Gustavo Rinaldi and Guillermo Marchesi;*
- *The role of the Brazilian House of Representatives’ Human Rights and Minorities Committee to help provide for liability and redress from global mining and smelting corporations , Gisela S. de Alencar Hathaway;*
- *Sustainable development: Linking the environmental and humans rights protection with mining projects in developing countries, Lina Muñoz;*

4. **Environmental Enforcement**

Chair: *H.E. John Cruden, Assistant Attorney General for the Environment, US Department of Justice*



Session overview: Effective Enforcement was addressed as one of the most critical elements in support of the rule of law. This session emphasized that in complex cases, laws and legal principles should be interpreted to resolve in favor of nature, hence the importance of current efforts

by the OAS and UNEP towards building capacity and raising awareness amongst judges to resolve uncertainties using preventive mechanisms available within soft law, international agreements and national jurisdictions. This session also highlighted that legal principles behind enforcement should be supported by a change in behaviors of citizens in favor of heightened awareness of the environment. In order to have effective enforcement, technical expertise, resources and time must be available to support action and compliance so that sustainable alternatives disincentive illegal activity, particularly regarding Multilateral environmental agreements. Finally, the session identified the need for integrated approaches to dealing with environmental problems as crucial to ensure compliance and enforcement of environmental obligations.

Selected and presented papers:

- *Applying the Principle In Dubio Pro Natura for Enforcement of Environmental Law, Prof. Nicholas Brynner;*
- *The challenges of enforcing nature rights and other regulatory advances in Ecuador, Maria Amparo Alban;*
- *Supporting Policy, Law and MEA implementation: Lessons and Experiences on accountability and compliance (of trails, streams, people and rivers in the Americas) Peter Lallas and Eduardo Abbott;*
- *Network Performance by Prosecutors: The Experience of Latin America's Environmental Prosecutor's Network, Silvia Capelli;*

5. ***Access Rights: Information, Justice and Process***

Chair: *The Rt. Hn. Lord. Mr. Robert Carnwath of Notting Hill, CVO, Justice, Supreme Court of the United Kingdom*



Session overview: During this session, access rights were described as the foundation upon which the environmental rule of law is built. Speakers highlighted how access rights promote the positive involvement of communities, public participation, access to information, prevention of environmental damages, and enforcing environmental laws directly. Further the session addressed how the future of sustainable development lies in the creation of a joint platform that expands environmental laws, and facilitates sharing experiences and challenges, thus leading to a harmonious strategy for a better world. Reference to the adoption of instruments such as the Inter-American Strategy for the Promotion of Public Participation in Sustainable Development Decision Making and the Bali guidelines, and to Environmental Courts and Tribunals was made, highlighting these instruments and specialized courts as a basis to foster effective environmental adjudication based on models and best practices. Further during the session speakers indicated that the creation of regional instruments or networks should support higher standards and not replace existing instruments and guidelines, but rather continue to advance the path towards access rights that will then translate into fewer conflicts throughout the Americas.

Selected and presented papers:

- *The world's 100 laws on ATI and their impact on the strengthening of environmental law, Ezequiel Santagada;*
- *Specialized Environmental Courts and Tribunals – and Access Rights in Latin America and the World.” George and Catherine Pring;*
- *Developing a Regional Instrument on Access Rights for Latin America and the Caribbean; Danielle Andrade-Goffe and Karetta Crooks Charles;*
- *Procedural right to access to justice: Inter-American Strategy for the Promotion of Public Participation in Sustainable Development Decision Making, Dr. Maria L. Banda;*





Unplugged Session

This discussion session offered the opportunity to have an open, dynamic, and inclusive debate regarding challenges, trends and the future of the Environmental Rule of Law in the Americas. Furthermore, this session raised awareness and opened a platform for debate to a diversity of voices coming from representatives of civil society organizations, community leaders, the youth as well as other key stakeholders. Dr. Orville Taylor, of Real Jamaican Radio, a renowned journalist, sociologist and popular motivational speaker, moderated this discussion from Montego Bay, including the following speakers:

- *Laleta Davis-Mattis, University of the West Indies, University Counsel/Adjunct lecturer Faculty of Law;*
- *Prof. Edith Brown Weiss, Francis Cabell Brown Professor of International Law, Georgetown law;*
- *Mr. Scott Vaughan, President and CEO, IISD*
- *Mr. Cletus I. Springer, Director, OAS Department of Sustainable Development;*
- *Madam Elizabeth Mrema, UNEP, Director Environmental Law and Conventions;*



Working Groups

This session was divided in 6 working groups (one per stakeholder category) and each group had a High Level expert as Chair leading the discussions through questions linked to the congress five (5) thematic sessions. Further the Chairs presented the summary of the working group deliberations during the final plenary session on trends on the Environmental rule of Law in the Americas. Outcomes are included in that session of this summary.

1. Working Group on Civil society organizations & Academia

*Chairs: Prof. David Hunter, Director International Legal Studies Program, Washington College of Law, Member IUCN-WCEL Steering Committee
Ezequiel Santagada, Executive Director IDEA Paraguay*

2. Working Group on the Judiciary

Chair: The Honorable Justice Philip Waki, Court of Appeals, Kenya

3. Working Group on Prosecutors

Chair: Sergio Baldelomar, Environmental Prosecutor (Costa Rica)

4. Working Group on Parliamentarians

Chair: The Honorable Senator Ninfa Salinas Sada, Senate of Mexico, President of the Environment and Natural Resources Committee

5. Working Group on Private practitioners

Chair: Mr. Scott Fulton, Principal, Beveridge and Diamond

6. Working Group on: IGO's

Chair: Juan Carlos Vasquez, CITES Secretariat





The final session focused on trends regarding the Environmental Rule of Law in the Americas and was chaired by The Honorable Dr. Ricardo Luis Lorenzetti, Chief Justice of Argentina. This session served to highlight

the trends and key aspects to foster the Environmental Rule of Law in the Americas, resulting from the sharing of knowledge and experiences in an environment of intellectual freedom and open dialogue amongst the multiple stakeholders present at the Congress. Dr. Lorenzetti stressed that environmental laws need to be linked to the rule of law, and thus requires strong institutions and separation of powers for the desired long-term policies. Dr. Lorenzetti also emphasized that environmental practitioners require adequate and reliable sources of information and networking to move away from traditional approaches and transition to the environmental rule of law by fully embracing the links with human rights, accountability, and public participation. The session also highlighted that it clear understanding that innovative ways to apply the environmental rule of law are being supported in more flexibility and through the use of arbitration and soft law mechanisms, but there is still a lack of enforcement.

During this session it was also stressed that conflicts on environmental issues need to be resolved in hand with traditions on accountability and open government in the rule of law. International Law Principles, such as the non-regression principle, should be enforced to avoid consequences regarding the protection of collective and individual rights. Speakers in this session, highlighted that the commitment and comprehensive approach undertaken out of the Congress should be to aim for the rule of law in a more systemic and holistic way, with clear separation of powers to properly enforce and advance economic growth in conjunction with sustainable development while protecting human rights and environment.



The following key messages for the advancement of the environmental rule of law were highlighted in the final session as resulting from the deliberations of the congress:

1. The environmental rule of law is fundamental for peace, social and economic wellbeing. It is indispensable in ensuring just and sustainable development outcomes and in guaranteeing fundamental rights to a healthy environment in the Americas. The constituent elements of the environmental rule of law include, inter alia, adequate and implementable laws, access to justice and information, public participation equity and inclusion, accountability, transparency, liability for environmental damage, fair and just enforcement, and human rights;
 2. The environmental rule of law must therefore be an integral part of the OAS sustainable Development agenda and must be strengthened throughout the Hemisphere for the realization of the proposed sustainable development goals and in fairness for future generations;
-
2. This document sets out the insights and views expressed by the participants. It is not a negotiated document, but rather a reflection of the broad perspectives and thinking of the participants that does not necessarily represent country or institutional positions or consensus on each and every issue

3. To Strengthen the Inter-American Human Rights System to achieve a systemic transformation and fully embrace the important links between human rights and the environmental rule of law;

4. Fostering strategic partnerships to support the environmental rule of law such as that amongst the OAS and UNEP, including other IGOs, civil society, relevant governments and other nontraditional stakeholders, including particular financial institutions, is important;

5. The OAS, UNEP, and their partners, must continue to support the identification of trends and the establishment of benchmarks on the environmental rule of law and to continue supporting Governments of the Americas, judges, prosecutors and parliamentarians in the development and implementation of the environmental rule of law;

6. Access to water is a fundamental right of great importance for the Americas. In order to consolidate this right it is important to bridge existing gaps in water related legislation and courts and tribunals must be supported in the implementation of this right.

7. Environmental Impact Assessment is a crucial instrument to ensure coherence amongst the objectives of trade, investment and environment. The full potential of this instrument must be realized;

8. Effective Enforcement presents a challenge to the environmental rule of law but constitutional provisions in the Americas provide a springboard and opportunities for enforcing fundamental environmental rights, for conflict prevention and advancing the environmental rule of law;





9. The Oversight function of parliaments in the Americas must be strengthened to support the transparency, effectiveness and accountability elements of the environmental rule of law. The exchange of information, experiences and best practices amongst parliamentarians in the region regarding the environmental rule of law should be encouraged through the establishment of a network supported by the OAS, UNEP and their partners;

10. In order to prevent the rise of social conflict citizens must be involved in the taking of decisions that affect them through implementation of common principles and frameworks as those included in the Inter-American Strategy for the Promotion of Public Participation in Sustainable Development Decision Making (ISP) and the Bali Guidelines for the development Guidelines for the Development of National Legislation on Access to Information, Public Participation and Access to Justice in Environmental Matters;

11. All elements of the enforcement system must come together in support of the Environmental Rule of Law and profits of illegal activity must be invested into greater implementation of Multilateral environmental Agreements (MEAs), stronger laws, institutions and ethical public officials;



12. Enhance, through the mobilization and increase of technical expertise and financial assistance, capacity building initiatives directed towards the executive, legislative and judiciary branches to enable countries of the Americas to effectively implement and ensure compliance with and enforcement of their environmental obligations;

13. Environmental Courts and Tribunals have begun to create a network of effective environmental adjudication based on models and best practices. The specialization of Courts and Tribunals in the Americas should be encouraged and continue to be supported by the OAS, UNEP and their partners;

14. Encourage the OAS, UNEP and their partners to support further development and regular exchange of information and experiences amongst the judiciary, the executive and the legislative through the continued organization of the Inter-American Congress on the Environmental Rule of Law on a periodical basis;

15. Deep concern is expressed regarding a deplorable trend witnessed at the Congress of regression in terms of environmental standards and environmental de-regulation in the Americas resulting in unsustainable economic growth.

Media & Press Coverage

1. Title: Press Release Point: April 1, 2015

Title: “Congress Co-Organized by the OAS Highlights Need to Advance Rule of Law to Address Environmental Challenges in the Americas”

Web link: <http://www.pressreleasepoint.com/congress-co-organized-oas-highlights-need-advance-rule-law-address-environmental-challenges-americas>

2. Caricom Today: April 2, 2015

Title: “Jamaica at forefront of environmental agenda, says PM Portia Simpson-Miller”

Web link: <http://today.caricom.org/tag/inter-american-congress-on-the-environmental-rule-of-law/>

3. Jamaican Information Service: March 31, 2015

Title: “Strengthening Environmental Laws Will Result in Sustained Economic Growth – PM”

Web link: <http://jis.gov.jm/strengthening-environmental-laws-will-result-sustained-economic-growth-pm/>

4. Jamaica Observer: April 2, 2015

Title: “Gov’t taking steps to address environmental breaches”

Web link: <http://m.jamaicaobserver.com/mobile/latestnews/Gov-t-taking-steps-to-address-environmental-breaches>

5. Glawcal: April 2, 2015

Title: “efforts to reinforce the environmental rule of law”

Web link: <http://www.glawcal.org.uk/index.php/our-activities/talks-lectures/talks-past-events/9-news/591-efforts-to-reinforce-the-environmental-rule-of-law.html>

Follow us at OAS official:



OAS_Official



OAS_Official

http://www.oas.org/en/sedi/dsd/ELPG/aboutELPG/Events/IA_congress_2015.asp



Organization of
American States



Montego Bay, Jamaica
March 30-31, 2015