

## **RESOLUTION No. 6/2006**

### **TRANSNATIONAL ENFORCEMENT OF ENVIRONMENTAL LAW**

The 72nd Conference of the International Law Association, held in Toronto, Canada, 4-8 June 2006:

**HAVING CONSIDERED** the Final Report of the Committee on Transnational Enforcement of Environmental Law;

**NOTING** the increasing importance of securing effective remedies for environmental problems which cross national borders, as evidenced by the case law of international human rights courts and the International Court of Justice;

**NOTING** also the draft articles on liability for transboundary damage and prevention of transboundary harm adopted by the International Law Commission in 2004 and 2001;

**TAKING INTO ACCOUNT** the New Delhi Declaration of Principles of International Law relating to Sustainable Development of 2002;

**THANKS** the Chairs, the Rapporteurs, and the members of the Committee on Transnational Enforcement of Environmental Law who have built upon the earlier work of the Association to prepare the Toronto Rules on Transnational Enforcement of Environmental law contained in the Report, and thanks the Rapporteurs for the commentaries on the Rules;

**ADOPTS** the Rules proposed by the Committee as adopted at the Working Session of June 7, 2006:

#### **Rule 1 – Access to Justice**

Every person has the right of access to a court in case of environmental risk or damage where the outcome of the proceedings may be decisive for the enjoyment of existing environmental rights and of the right to life; the right to private and family life and home; the right to receive and impart information and ideas; or the right to peaceful enjoyment of possessions.

#### **Rule 2 – Decision-making by Public Authorities**

- (1) States shall ensure that where public authorities have issues of policy to determine, the decision-making process must involve appropriate investigation and studies in order to predict and evaluate in advance the effects on the environment and to enable them to strike a fair balance between the various conflicting interests at stake, including those of persons in other states.
- (2) States shall ensure that, in the process of making decisions relating to the environment, public authorities shall take into account the interests and representations of any person in another jurisdiction who may be affected.

### **Rule 3 - Standing**

- (1) Every State shall ensure that any person having a sufficient interest has the right of access to the competent domestic court or administrative authority to challenge the substantive or procedural legality of decisions, acts or omissions by private persons and public authorities relating to the environment.
- (2) "Sufficient interest" shall be determined in accordance with the requirements of the applicable law as determined by the forum and consistently with the objective of ensuring the widest possible access to justice. To this end, non-governmental organisations promoting environmental protection shall be deemed to have sufficient interest.
- (3) Any such procedures shall be fair, equitable, timely and not prohibitively expensive. Procedures available to transboundary claimants shall not be less prompt, adequate and effective than those available to nationals in the State of origin.
- (4) The procedures referred to in the previous paragraphs shall provide adequate and effective remedies, including injunctive relief as appropriate. States shall also consider the establishment of appropriate assistance mechanisms to remove or reduce financial and other barriers to access to justice.
- (5) In order to further the effectiveness of the provisions of this Principle, States shall ensure that practical information on access to administrative and judicial review procedures is made available, particularly to interested persons in other jurisdictions.

### **Rule 4 - Jurisdiction**

- (1) Without prejudice to any special Treaty regime, in proceedings relating to environmental damage, a defendant shall be sued, at the option of the plaintiff, in the courts of the State where –
  - a) the defendant is domiciled or resident; or
  - b) the act or omission that caused injury occurred or may occur; or
  - c) the injury arose or may arise.
- (2) Rule 4(1) shall include actions before civil courts by a government, a governmental agency or any other person acting for or on behalf of the State.
- (3) For the purpose of this Rule, an entity or person other than a natural person shall be considered to be domiciled or resident in the State:
  - a) where it has its statutory seat;
  - b) under whose law it was incorporated or formed;
  - c) where it has its central administration; or
  - d) where it has its principal place of business.

### **Rule 5 - Applicable Law**

- (1) In proceedings relating to the preceding Rule, the applicable law shall be, at the option of the injured party:
  - a) the law of the State in which the damage arose or may arise, or

- b) the law of the State in which the event giving rise to the damage occurred or may occur.

(2) If the applicable law is not determined under paragraph 1, that law is the law of the State in which the damage arose or is likely to arise, irrespective of the State in which the event giving rise to the damage occurred and irrespective of the State or States in which the indirect consequences of that event arose.

(3) The parties may agree, by an agreement entered into after their dispute arose, to submit their dispute to the law of their choice. The choice must be expressed or demonstrated with reasonable certainty according to the circumstances of the case. It may not affect the rights and obligations of third parties.

### **Rule 6 - Scope of Applicable Law**

(1) The law applicable under any of the paragraphs of Rule 5 shall govern in particular:

- a) the conditions and extent of liability, including the determination of persons who are liable for acts performed by them
- b) the grounds for exemption from liability, any limitation of liability and any division of liability
- c) the existence and kinds of injury or damage for which compensation may be due
- d) within the limits of its powers, the measures which a court has power to take under its procedural law to prevent or terminate injury or damages or to ensure the provision of compensation
- e) the assessment of the damage in so far as prescribed by law
- f) the question whether a right to compensation may be assigned or inherited
- g) persons entitled to compensation for damages sustained personally
- h) liability for the acts of another person
- i) the manner in which an obligation may be extinguished and rules of prescription and limitation, including rules relating to the commencement of a period of prescription or limitation and the interruption and suspension of the period.

(2) This rule does not alter existing substantive law and existing limitations on the extra-territorial effect of the applicable law.

**TAKES NOTE** of the commentary;

**COMMENDS** the Committee's Report to international organizations, their Member States, and all other bodies concerned in advancing and implementing the transnational enforcement of environmental law;

**REQUESTS** the Secretary-General of the Association to transmit this resolution and the Committee's Report to the Secretary-General of the United Nations, for the particular attention of the International Law Commission and to circulate it widely among international organizations and agencies of, or related to, the United Nations; and

**RECOMMENDS** to the Executive Council of the Association that the Committee on Transational Enforcement of Environmental Law, having achieved its mandate, be dissolved, without prejudice to whatever other arrangements the Executive Council sees fit to make.