

The Status of the Actio Popularis under International Environmental Law in Cases of Damage to Global Commons

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Abstract : In recent years the International Community has seen a rise of what can be termed as 'actio popularis'; that is to say lawsuits brought by third parties in the interest of the public or the world community as a whole, such as in cases of genocide and terrorism prosecutions under international law. It is equally clear that under current globalized world the effect of multinational activities on the environment is often felt beyond the borders of the territories where they operate. Equally true is the fact that the correspondence of citizens self-determination with national government is increasingly upset by the increasing willingness of states to share some 'sovereign powers' in order to address new economic, environmental and security interdependencies. The 'unbundling' of functional governance from fixed territories sees continuously citizens give up their formal approval of key decisions in exchange for a more remote, indirect say in supra-national or international decision-making bodies. The efforts to address a growing transnational flow of ecological harm are at the forefront of such indirect transformations, as evidenced by a proliferation of multilateral environmental agreements (MEAs) over the past three decades. However, unlike the defence of the global commons in cases of terrorism and genocide, there is still to be a clear application of action popularis in the case of environment, despite acknowledgement that the effect of the activities of several multinationals on the environment is as destructive to the global commons as genocide or terrorism are. Thus, this paper looking at specific cases of harmful degradation of the environment by certain multinationals transcending national boundaries, argues that it is high-time for a serious consideration of the application of the actio-popularis to environmental concerns. Although it is acknowledged that in international environmental law the challenge to reach a "critical mass" of recognition and support for an 'actio-popularis' for environment damage is particularly demanding, it is worth the try.

Keywords : actio popularis in environment law, global commons, transnational environmental damage, law and environment

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