

## ICEAC Newsletter

### Upcoming Events:

- CSD-17, May 4-15 2009, United Nations Headquarters, New York, USA
- Seminario Conflicto Ambiental, July 1-3, 2009. University of the Basque Country, San Sebastian, Spain.



### Derecho de las Futuras Generaciones

Prof. Demetrio Loperena

*Tempus fugit* es una locución romana que ha llegado hasta nuestros días y expone no sólo una realidad física o biológica, sino una experiencia vital omnipresente en los seres con un cierto grado de autoconsciencia, como es el ser humano, la persona. Heráclito y su *panta rei* fue, entre los antecesores de nuestra cultura, quizás el que más reflexionó sobre el continuum que constituye nuestra vida, la cual mien-

tras la estamos viviendo ya podemos mirar atrás mediante nuestro sistema cerebral de recuerdo y ver que es pasado.

Permítaseme traer a colación un sueño que tuve hace tres años aproximadamente. En ese sueño me encontraba conversando con un joven estudiante que era yo mismo con poco más de veinte años. Pues bien, la coincidencia en ideas era imperceptible. Es más, en un asunto

político de no demasiada trascendencia comenzó a subir el tono de forma completamente inusual en mí. El yo del sueño era el adulto, por supuesto, y se encontraba algo confundido porque estaba en desacuerdo con casi todo lo que decía el joven.

Cuando del ámbito personal se pasa al colectivo la percepción es diferente, la continuidad de la familia, de la nación o el del propio Estado sigue siendo

un valor generalizadamente perceptible y cada miembro de estos colectivos es frecuente que, aun admitiendo variaciones, luche para que permanezcan vivos con carácter indefinido. Es una convicción individual y colectiva procedente, sin duda, de nuestro instinto de supervivencia. Por eso en las épocas recientes ha aparecido una nueva colectividad a proteger, los seres humanos en su conjunto, nuestra especie. Fenómeno totalmente nuevo y extraño en el pasado, fuera de los estudios filosóficos de entidad. *Cont. Page 2*

### Core Principles of Conflict Resolution: A simplistic approach

Katerina Yiannibas

Conflict, at every level of abstraction, saturates our existence. Ranging from war between nations to a most personal argument between friends, all conflict is based upon one immensely complex yet all the while rather simple concept: communication rift. We- as individuals, communities, nations- often fail to communicate effectively, if at all, and what results is a rift: the failure to express our values and intentions all the while failing to understand the values and intentions of others.

Consider the following scenario: You are the parent of two bright young girls. One day, you walk into the kitchen to see them fighting desperately over a single orange. One needs the orange for her science project and the other to bake a cake for her cooking class. Both of their grades depend on it and as per their instructions, each requires one orange (meaning half an orange would be insufficient for either). As the hypothetical goes, you can assume there is no time to find another orange and that neither project allows for any substitutions. Your lovely girls are at each other's throats, screaming for the orange, and neither is willing to give up. They have reached a stalemate and the harmony in your home hangs in the balance. What do you do?

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## Derecho de las Futuras Generaciones Cont.

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La mayor parte de la historia humana está repleta de luchas entre grupos de diferente naturaleza y número; jamás se preocuparon de la desaparición de la especie, y si únicamente por la de su grupo. Sin embargo, las alteraciones de la biosfera producidas recientemente, en términos relativos, hacen temer por nuestra supervivencia ya que solo podemos vivir en una franja muy estrecha de parámetros biosféricos.

Su dramática alteración por nuestra propia errónea actuación plantea como uno de los escenarios posibles en dos siglos más la desaparición de nuestra especie. Esto es, si seguimos avanzando hacia esta hipotética situación es previsible que se desaten gigantescos conflictos sociales dado que la experiencia histórica demuestra que los seres humanos en estado de extrema necesidad o afectados por el instinto de supervivencia se emplean con una crueldad sin límites. La única respuesta para evitar ese indeseable escenario está en mantener el medio ambiente en sus parámetros adecuados como requisito básico. A continuación, desde luego, buscar sistemas de organización social que den un grado de satisfacción de las personas y los grupos compatible con el medio ambiente. Es evidente que llegamos algo tarde porque está muy dañada la biodiversidad, el agua y la atmósfera. Pero todos confiamos en que no sea tan tarde como para perder la esperanza.

En ciencia política, en particular, se entiende como reservado a su ámbito de estudio y aplicación el espacio que se expande entre los límites de lo imposible y los de lo irremediable. La alteración de los parámetros de la biosfera era hasta hace pocas décadas un imposible y, por consiguiente, algo no contemplado. El esfuerzo intelectual por construir una política ambiental de entidad hace que todavía los instrumentos conceptuales y su aplicación práctica no estén suficientemente contrastados y que haya que actualizarlos constantemente. Porque otra idea omnipresente en las ciencias sociales era dar por sentado como verdad axiológica la supervivencia indefinida de los humanos.

Poner en cuestión o alterar esta piedra basilar hace temblar todas las instituciones que hemos creado. Por eso uno de los pioneros del Derecho ambiental, el maestro argentino Eduardo Pigretti, acostumbra a decir que el triunfo verdadero del Derecho ambiental sólo se producirá cuando desaparezca. En definitiva, cuando todas las ramas del Derecho hayan interiorizado que los límites del planeta son imposibles de franquear y que nuestra supervivencia está irremediablemente anudada al mantenimiento de ciertos parámetros biosféricos, el Derecho ambiental desaparecerá por innecesario.

La hasta ahora inevitabilidad de la existencia de futuras generaciones de seres humanos estableció un orden social que ahora debe contemplar este rasgo como una hipótesis variable. Y ya no es sólo los análisis lógicos o racionales los que nos deben llevar a esos planteamientos sino la propia ética. Los datos históricos demuestran que individuos y grupos han tratado de legar a sus sucesores, habiendo fracasado estrepitosamente en muchas ocasiones, una familia o una nación más próspera que lo que ellos la encontraron. Podemos afirmar que la cláusula de progreso en nuestra conciencia y en nuestro labor diario tiene muchos miles de años.

En la actualidad, sin embargo, casi todo el mundo está convencido de que nuestros descendientes van a tener más problemas que nosotros para satisfacer sus necesidades y para encontrar esa cuota básica de felicidad a la que aspiramos. Los que estudian filosofía moral y política ya están avanzando que es profundamente inmoral mantenerse pasivo ante la certeza científica de que la sociedad en su conjunto pierde más medio ambiente de lo que gana en conocimientos o ciencia. El deterioro ambiental es acumulativo y lo que hoy es habitable, con el mantenimiento en el tiempo del grado de deterioro actual puede resultar no apto para la vida humana en x años. Esto es, lo que hoy podemos soportar no lo podrán hacer las futuras generaciones por el factor acumulativo de la degradación ambiental. De este modo, acentuar la posición jurídica de las futuras generaciones puede ayudarnos a interpretar mejor la idoneidad de nuestras propias decisiones con afectación ambiental. Así, a diario tomamos decisiones amparadas por la Administración que tienen efectos ambientales negativos escasamente perceptibles por los vivos. Pero si con un programa de simulación proyectáramos las decisiones o actuaciones negativas para el medio ambiente a cien años vista y nos diera un resultado de desaparición de nuestra especie, o de vida humana en condiciones de indignidad, la evidencia de la inmoralidad de lo decidido o actuado sería tan palmaria que podríamos ser responsables de verdaderos crímenes. Ahora que parece que va a comenzar un nuevo orden social, que lo sea con respeto a nuestros nietos.

## Core Principles of Conflict Resolution: A simplistic approach Cont.

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The example may seem simple but is in fact illustrative of the core principles of conflict. Each sees only what they want, in this case an orange, and when compromise seems impossible, they become further entrenched in their positions, their feelings aggressively flare, and communication breaks down. As illustrative as the problem is itself, the responses I have received from others when posing this hypothetical predicament are just as telling.

The most common response, and one reflective of litigation practice more generally, is the reflective of the win-lose approach. Some imposed a personal value judgement on the hypothetical, suggesting that science is more important than baking, so one daughter will have to remain without. Others have taken the more diplomatic approach by arbitrarily selecting which will receive the orange, flipping a coin for example, and then writing a kind note to the other's instructor explaining the predicament and asking for an extension. Conversely, some others have employed the lose-lose approach: frustrated with the girls' bickering, award the orange to neither one, deciding instead to eat the orange themselves and subjecting each to learn the bittersweet lesson of failure.

Despite their variances, overall the responses share one common theme: people are more concerned with pushing forward their own solution to the problem than properly investigating the problem itself. As they ask questions of the hypothetical in an effort to ascertain the one, *right* solution, I am often amazed how quickly satisfied some are when receiving what I would deem incomplete or vague answers. One example is the often asked question: "They each need one *whole* orange?", to which I reply: "Each of their instructions requires one orange." What many fail to recognize is that I haven't answered their question with all the information I have available. Having asked a question and hearing a related response seemed to be satisfactory enough. What they have done is assume that asking the requisite question is the same as receiving a relevant and useful response. A second common and faulty assumption in this scenario is that both parties view qualifying terms in the same way. For instance, to one party a "whole" orange may signify the sum of all its parts while to another it means no more than a number, one single orange, and nothing more. Again, this reflects a most common incidence of conflict: We hear ourselves advancing our position, but do we ever stop, listen, and most importantly, comprehend the response?

The currency in any negotiation of conflict is not the solution itself, but the information upon which the solution is built. When presented with a problem, many seek to ascertain a solution, prioritizing the quick restoration of the status quo above fully exploring the components of the conflict itself: the assumptions, the intentions, and the values upon which it lies. In the simplest of terms, we don't want to understand the problem, we want it to go away, and the faster the better. What many fail to realize is that investing some, not necessarily much time in information gathering may save huge costs in the long run. Indeed, information is currency, and with information we create value.

Returning to the infamous orange predicament, the key lies in gathering more information about the problem itself. Asking open ended questions and developing the responses: "When you say you need one orange for your project, can you describe to me exactly what that means? What will you do with the orange?" And of course, asking the questions is not enough. Check the responses you receive against the information you sought to gain. Are you satisfied with the response or do you need to point out that your question was not answered and ask it again or in a different way so that what you seek to learn is understood by the other party. Moreover, aggrieved feelings often shield direct responses. Some parties may be too angry to reveal any helpful information. A first step may be as simple as acknowledging the feelings and being transparent about your role in the process. For instance: "I can see you are upset and this situation is frustrating you, but remaining upset will not solve our predicament. I would like to help but you need to help me understand the problem."

Information gathering is crucial and should always be accompanied by active listening, and when appropriate, a careful diffusion of tension. Questions should remain open-ended, allowing the other party to express themselves openly instead of confining them to a narrow yes or no response. We don't know what we will hear when we ask a question or else we wouldn't ask it. As such it is important to frame questions initially as openly as possible so as to avoid imposing our own values on the information we are about to receive. It is the difference between asking, "What are your thoughts on this?" and "You don't like it do you?" Which question would you presume lends to more information exchange?

Once information is exchanged, we can begin to create value. In the orange example, if one begins to explore each of the daughter's perspectives on the utility of the orange, you would learn that one needs the *rind* of one orange and the other needs the *juice* of one orange. In the end, it's a win-win, but only if the requisite information is exchanged. Which leads us back to the initial point: learning how to express our values and intentions all the while taking the time to understand the values and intentions of others. Information is indeed currency, the challenge is ours to use it to make a valuable contribution.

## International Trade Rules: Proposals for Legitimacy

Giuseppe Traverso Saibante

*Can you tell a green field from a cold steel rail?  
A smile from a veil?  
Do you think you can tell?*

Along centuries, men have been interrogating themselves about the sense of existence. Epicurus found answer on happiness, Plato in virtue, Buddha in contemplation and death's awareness, Jesus in love and self-giving, Lao Tse in oneness. Whatever be the answer, today an individual could hardly search and find his own response in complete isolation and liberty like Zaratustra in his mountain's cave: we would hit against passport controls, overpopulation, lack of free spaces, absence of silence, landscapes reshaped by human hands, airplanes above one's eyes.

You want it or not, at present, so closely interconnected, we have a stronger necessity to get along with each other. Completely independent and isolated communities no more exist; we live a permanent forced inter-relation. Some would build new walls and barriers to protect their identity and territory; but, merely as such, material walls are fated to break down. This interacting has also brought and brings positive effects, as a higher reciprocal understanding and a slow convergence on fundamental human values; an enriching blend of cultures through a free and voluntarily chosen interchange between people. Such circumstances are nothing new in history and nevertheless they never occurred at this rapid pace.

For it to work properly out, people have to be willing and not obliged by poverty and material constraints, to move and integrate in new places. The mental process of human understanding and acceptance of the other requires time and a free motivated choice. It does not work when external drivers oblige you to make unwanted decisions. However, that's the present dynamic process in which economic globalization plays a very important role.

The vicious circle may begin when governments make decisions - both at national and international level- representing the will and the interest of few haves that increase economic inequality and material opportunities to prosper. In such a context, global economic institutions are perceived not to work to secure peace and justice among people, nor willing to promote a higher general prosperity. They don't seem willing to redress but rather to perpetuate the unjust and natural-resources-depleting status quo, as the growing imbalance in the world's economic distribution as well as the declining state of the nature prove. International trade rules and institutions lack of political and social legitimacy: they are not democratically elected and furthermore their outcomes are not socially accepted, as a result of policies increasing transnational corporations' profits and power, meanwhile leaving a wake of collateral effects both in developing countries and in developed countries.

Within current international trade rules, we often export and import non-demanded goods we have at home (with the support of marketing strategies and advertising campaigns, traders *create* a demand or a "need", instead of *responding* to a prior local effective need or demand), making them traveling thousand miles without internalizing environmental costs and without making consumers aware about the different array of consequences that diverse purchase's choices between local and imported products have.

The pace at which a large number of superfluous products move and the norms by which international trade rules global economy are undermining nature's conservation and contributing to the disappearance of small and rural communities and local traditional markets, those who constitute the main source of work in rural areas and the main economic and social driver for most of world's inhabitants.

Whilst international trade, ruled and liberalized through balanced and just norms, might bring huge prosperity for the majority of people, current rules mainly benefit to multinational companies, able to invest capitals, to import and export, and to provide new services and products without any previous enquiry on local people priority needs, willingness, habits, tradition and belief. Such a process contributes to create a unique model of lifestyle, based on having and not and being, rooted in possessions and appearance instead of not virtues and inner qualities. A cultural model that is being advertised and exported, gently imposed and slowly accepted. Current international trade system validates itself showing the increase of states GDP and individuals' power of purchase. Curiously, such assessments omit to evaluate other factors of equal or higher importance: environmental and social impacts, losses of communities' structures, lifestyle, traditions and values, rapidly replaced by modern values based on possession and competition. Such priceless losses are, sometimes voluntarily sometimes forcedly, traded in exchange of a non-autochthon and unsteady material development.

## International Trade Rules: Proposals for Legitimacy Cont.

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Even in the best case, material development alone – as an accepted principle of psychology demonstrated everyday in western societies - does not resolve the problem of humanity's and individuals' suffering. Other international trade rules' "collateral effects" increasingly perceived are: the protection of companies' royalties against human illnesses and deaths by patent law; decision-making processes at closed-door with non-participatory or publicly debated decisions, despite their impacts over billion of people towards which WTO and other global economic institutions have no direct mandate to represent nor the right to manage or affect.

Today international trade is no more a technical isolated issue unrelated to other domains, but still it is managed as such. As an alternative, trade liberalization policies need to be imbued with a comprehensive vision, created with the direct involvement of officials and civil society's representatives from non-trade domains. International trade system's legitimacy may only derive from integration and a participative approach directed to reestablish fundamental principles and norms aiming to adequately manage the interconnected economy.

As an example of substantive core revision needed, it easily results unreasonable and unjust that today, as within current rules, the protection of priority domains as human health, the environment or local communities welfare be "trade restrictions", exceptions – when applicable - to be justified and carefully motivated by States and later assessed and case-by-case judged by international institutions. Such a fact is inconsistent with people priority and concerns as well as with the UN agenda reshaped by the Millenium Development Goals. The pyramid of values and of powers turns over: sovereign people on *their* commonly-owned environment and natural resources become in the a trading system merely norm-addressees and passive victims of decisions taken by institutions with no political legitimacy and however supposedly mandated to serve on their behalf and for their prosperity. This democratic deficit is increased by the lack of accountability of WTO and global institutions decisions towards citizens

Fundamental questions of social legitimacy – based on an institution's outcomes – lie negatively answered: is the current international trade system benefiting the majority of people and societies by a greater and fairly distributed economic prosperity? Are current WTO rules willing and capable to adequately take into due account peoples' will, demands and concerns in the decision-making process? Not only a democratic deficit and unjust outcomes undermine the acceptance of current WTO rules. Moreover, between global economic institutions and civil societies, it remains a huge gap of vision and underlying values that should embed WTO norms, objectives and procedures.

Globalization needs a free flow of knowledge, information, culture and people. At political level, globalization serves to our needs and quality of life basically as an instrument of empowerment: the possibility to *freely and autonomously* know, interact, move and *decide*. That is the paramount virtue of globalization: a means for a better being not for a higher having; a means for a better and direct interrelation, knowledge and understanding between societies and individuals, as well as a tool for a wider spectrum of choices. Whether you might decide to live lost in your home country village or conversely to move, trade and work in different places of the world, you have the means to do it.

Globalization needs free internet for sharing values and exchanging ideas, opinions and critics; it needs transports as material way to move; it needs free-time for people to think and enjoy instead of new work slaves producing for compulsory unhappy consumers.

WTO members and officials have the difficult and not easy task to gain a comprehensive vision of society and make economic rules fit into it. The first step is to acknowledge changes of circumstances and demands: social instances of justice, of human rights' enforcement and environmental protection can't but increase; new actors and players representing civil society and non-national identities are needed to be included; the horizontal impact of global trade policies requires a broad vision and integrated management; current of the international human right and environmental systems weaknesses convey humanitarian or environmental issues to WTO augmenting its burden of work and putting at risk its acting out of scope. Despite such difficulties, the needed instruments to make this interconnected global society more harmonious and fairly balanced are not to be invented but do already exist being at disposal, presently missing big lobbying and governments' acceptance to be triggered and used: participatory and consented decision-making, involving case-by-case interested and affected subjects as well as technical independent experts; promotion of small-scale local markets and local governments' role; prohibition of real distortional obstacles to trade as states subsidies or licenses to companies for exploitations; a strong promotion of transparency, information; an institutionalized coordination between trade, environmental and human rights international bodies with a concerted consultation process in law-making and in disputes settlements.

## International Trade Rules: Proposals for Legitimacy Cont.

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In brief, trade norms and institutions must work and be embedded with principles of:

1°. Participatory democracy, proactively searching and involving sovereign affected communities, the decisions' addressees, in decision-making process

2°. Use of scientific data as legal basis to previously assess long-term social and environmental impacts of any decision.

3°. Solidarity and moderation: decisions benefiting a group but likely to negatively affect another community must be openly and jointly renegotiated to find a commonly acceptable solution.

Globalization can work only if rules are established with the genuine intention to give people -not products or capitals- liberty and freedom. We need individual sensitiveness as well as adequate legal frameworks to halt predominance over other people and nature, to stop cultures' erosion, loss of local lifestyles and markets, loss of biodiversity. An integrated approach requires the economic system to enhance solidarity and justice, by means of a comprehensive long-term visionary plan made by sensible and capable minds. Surely, freedom belongs to people and living beings before products and capitals.

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## Los Estados y la Implementación de los Derechos Humanos

Diana Rodriguez Uribe

Los Estados juegan un papel paradójico en la implementación de los derechos humanos: se constituyen como los sujetos susceptibles de violar estos derechos y, a la vez, son los encargados de garantizar su cumplimiento.

Hace 60 años, con el establecimiento del derecho internacional de los derechos humanos, se creó un sistema internacional que por primera vez sitúa al individuo como eje central otorgándole derechos en el ámbito internacional. Una construcción teórica que pone en el mismo nivel al Estado y la persona, reconociendo los derechos mínimos e inviolables que le son inherentes a todo ser humano con independencia a la voluntad estatal. La opinión emitida en 1966 por el juez japonés Tanaka, miembro de la CIJ, lo expresa de manera clara: *“La existencia de los derechos humanos no depende de la voluntad del Estado; ni en su ley interna o cualquier otra medida legislativa, ni tampoco internacionalmente en los tratados o la costumbre ...”*

Aunque cierta en el papel, esta teoría lleva a preguntarse ¿cómo hacer exigible un derecho existente si el Estado no lo reconoce como tal?. Los gobiernos nacionales afirman constantemente su compromiso con los derechos humanos pero en realidad se evidencian falencias tanto en su garantía como en las posibilidades de reivindicación por parte de los ciudadanos.

A continuación se presentan algunos elementos que explican las causas de dichas falencias, cuya solución podría contribuir a la 're-legitimación' de los derechos humanos como sistema normativo efectivo:

### **El problema de la Jurisdicción y la Soberanía.**

El goce de los derechos y libertades garantizados en los Convenios internacionales de DDHH sólo es posible en la medida en que los mismos puedan hacerse exigibles en el ámbito nacional. Sólo la aceptación expresa por parte de los estados de las obligaciones internacionales permite la exigibilidad de los DDHH.

El caso de los Estados Unidos dentro del sistema Interamericano ilustra la situación: adhiriéndose al Pacto de San José, este país ha reconocido formalmente los derechos en ella consagrados pero ha escapado del elemento vinculante al no firmar la Convención Interamericana; desconociendo con ello la competencia de la Corte. Con la clara intención de no someterse a un

sistema de control externo, el Estado deja' desprotegidas a las víctimas que bajo su jurisdicción buscan denunciar una violación y exigir su reparación en el ámbito internacional.

Igualmente, el principio de jurisdicción territorial permite a los Estados eximirse de violaciones cometidas fuera de sus fronteras. En teoría, los sistemas internacionales de DDHH deben actuar como línea de defensa cuando los sistemas nacionales prueben no ser efectivos, lo que en derecho se denomina principio del previo agotamiento de las vías internas; además, la jurisprudencia internacional -como en los casos de *Stocké* y *Loizidou* dentro del sistema europeo- ha establecido que el término *jurisdicción* extiende la obligación de garantía más allá de las fronteras territoriales cuando el Estado ejerce una autoridad o control de facto fuera del territorio nacional. Sin embargo, casos en donde los Estados aceptan sólo la responsabilidad sobre lo ocurrido dentro de su territorio utilizando las fronteras como factor de exclusión, dejan en entredicho los planteamientos teóricos.

## 2. El Estado Frente a las Víctimas y Población Vulnerable.

El individuo aparece como protagonista del sistema de protección cuando se configura como víctima de alguna violación. Aunque existen programas internacionales de prevención de las violaciones de los DDHH, son muy escasos los mecanismos positivos nacionales dirigidos a eliminar las causas desde la raíz. El Estado es el sujeto responsable de convertir los programas internacionales en acciones concretas y reales.

Los grupos sociales más vulnerables y propensos a ser víctimas de violaciones de derechos fundamentales viven unas realidades -geográficas, económicas y sociales- que dificultan la realización de los derechos humanos, en particular los derechos económicos y sociales. Por otro lado, el desconocimiento de sus derechos aumenta el estado de indefensión de la población vulnerable. En estas circunstancias, la implementación del Estado cobra mayor importancia. Los gobiernos deben informar positivamente a los ciudadanos sobre sus derechos, los mecanismos para su exigibilidad y las autoridades encargadas su ejecución. El desplazamiento forzado ejemplifica claramente la situación: los desplazados constituyen un grupo vulnerable; una población que, generalmente a causa de conflictos armados, se enfrenta a la pérdida de la tierra y la vivienda, al empobrecimiento y a un deterioro completo de las condiciones de vida, quedando inmersos en una su situación de "desprotección de facto". Existen programas internacionales como los Principios Rectores de los Desplazamientos Internos emitidos en 1998 por la ONU, que establecen líneas de actuación para los Estados. Sin embargo, la existencia de estos programas, por sí mismos, no garantiza una mejoría de la realidad; sólo la transposición y ejecución interna del Estado las hace efectivas.

## 3. Valor de los Informes y Ejecutoriedad de las Sentencias Internacionales.

El rol de las sentencias y los informes internacionales es indispensables para la implementación de los derechos humanos, pues son los mecanismos mediante los cuales se hace aplicable la normativa internacional o se insta a su aplicación. Sin embargo, el nivel de obligatoriedad que presentan frente a los Estados, en muchos casos insuficiente, evidencia la necesidad de otros instrumentos positivos que constriñan a su cumplimiento.

Las sentencias de los tribunales internacionales han conseguido el reconocimiento de la responsabilidad estatal y la reivindicación por parte de las víctimas de sus derechos. A pesar de ello, los Estados, que en virtud del principio de *pacta sunt servanda* están obligados a cumplir los fallos de buena fe, llevan a cabo una ejecución inadecuada o deficiente de las sentencias. Esto se debe a que en la práctica el incumplimiento de una condena, como por ejemplo una reparación económica que no llega siquiera a la mitad de lo establecido mediante sentencia, no tiene un adecuado valor disuasorio para los Estados. Las consecuencias del incumplimiento se limitan a una imagen negativa a nivel internacional pero no a una ulterior sanción específica.

Por otra parte, aunque los informes periódicos que presentan los Estados y los realizados por las instituciones internacionales cumplen un papel de presión política y de publicidad frente a la comunidad, la mera denuncia de las violaciones deja la situación en suspenso; como una fotografía detrás de la cual continúan los abusos sin lograr que se modifique la realidad.

La paradoja del doble papel del Estado, garante y potencial violador de los derechos humanos a la vez, disminuye el valor de un sistema internacional creado para proteger al individuo pero que sin embargo, en la cotidianidad, puede serle tan lejano e ineficaz que llega a perder su credibilidad.



## **International Court of Environmental Arbitration and Conciliation**

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