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THE ROLE OF THE NATIONAL GREEN TRIBUNAL: MIRRORING AND DEPARTING FROM ICJ ENVIRONMENTAL JURISPRUDENCE

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INTRODUCTION

As the International Court of Justice marks eighty years of shaping international law, one of its most fascinating legacies lies in how environmental jurisprudence has moved from the margins to the mainstream. Landmark rulings such as Pulp Mills on the River Uruguay (Argentina v. Uruguay), 2010 I.C.J. 14 (Apr. 20), and Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicar.), 2015 I.C.J. 665 (Dec. 16), have set global benchmarks for how states must approach environmental risk, impact assessment, and precaution.

India's National Green Tribunal offers a compelling case study in how these international principles travel into domestic practice — and where they take on a life of their own. In some respects, the NGT mirrors the ICJ's reasoning closely, particularly its insistence on rigorous environmental impact assessments and precautionary action in the face of scientific uncertainty. But in other, more striking ways, the NGT breaks new ground: adopting an inquisitorial approach to fact-finding, reversing the burden of proof onto polluters, and prioritizing ecological restoration over simple compensation.

This piece explores that relationship — where the NGT echoes the ICJ's foundational logic, and where it charts its own, more assertive path.

STATUTORY ORIGINS OF THE NGT

The National Green Tribunal was created under the National Green Tribunal Act, No. 19 of 2010, India Code, shaped by international commitments — including Principle 10 of the Rio Declaration on Environment and Development, U.N. Doc. A/CONF.151/26 (Vol. I) (Aug. 12, 1992), and the Stockholm Declaration of the U.N. Conference on the Human Environment, U.N. Doc. A/CONF.48/14/Rev.1 (1972) — as well as domestic pressure. The Law Commission of India's 186th Report (2003) found that regular courts were ill-equipped for technical, data-heavy environmental disputes previously routed through public interest litigation.

Key structural differences:

- Jurisdiction — The ICJ exercises general jurisdiction, treating environmental harm as incidental to state sovereignty or treaty disputes. The NGT holds issue-specific civil jurisdiction under section 14 of the National Green Tribunal Act over seven scheduled environmental statutes only.
- Standing — The ICJ is strictly state-to-state under article 34(1) of the Statute of the International Court of Justice; individuals and NGOs have no direct access. The NGT allows broad, polycentric standing under section 18 of the National Green Tribunal Act — any aggrieved individual, community, or NGO may petition directly against corporations or governments.

The throughline: the NGT was purpose-built to address exactly what the ICJ's structure cannot — direct, technical, and accessible environmental justice.

CORE JURISPRUDENTIAL BRIDGES: SHARED PRINCIPLES IN PRACTICE

1. THE PRECAUTIONARY PRINCIPLE

- ICJ — In Gabčíkovo-Nagymaros Project (Hung. v. Slovk.), 1997 I.C.J. 7 (Sept. 25), the Court required concrete proof of harm over Hungary's predictive risk claims, adopting a cautious, reactive posture.
- NGT — In Save Mon Region Federation v. Union of India, Appeal No. 39 of 2012 (Nat'l Green Trib. 2013), the Tribunal suspended clearance for a hydroelectric project threatening the black-necked crane's habitat without waiting for proof of harm, treating scientific uncertainty itself as grounds to halt the project.

2. THE POLLUTER PAYS PRINCIPLE

- ICJ — In Certain Activities (Costa Rica v. Nicar.), 2018 I.C.J. 15 (Feb. 2), the Court calculated ecosystem-service damages of approximately $378,890 but directed

payment into Costa Rica's general treasury, with no binding guarantee that the funds would restore the specific wetland harmed.

- NGT — In cases such as Mantri Techzone and the Ganga pollution litigation arising from M.C. Mehta v. Union of India, the Tribunal levies fines directly into a ring-fenced Environmental Relief Fund under section 24 of the National Green Tribunal Act, mandated for specific site restoration — direct ecological accountability rather than a general state payout.

3. SUSTAINABLE DEVELOPMENT AND INTERGENERATIONAL EQUITY

- ICJ — In Pulp Mills on the River Uruguay (Arg. v. Uru.), 2010 I.C.J. 14 (Apr. 20), the Court treated sustainable development as a procedural balancing act, finding that Uruguay breached its consultation duties while permitting the mill to continue operating.
- NGT — In Forward Foundation v. State of Karnataka, Appeal No. 16 of 2015 (Nat'l Green Trib. 2016), the Tribunal went further substantively, striking down real estate projects and permanently expanding lake buffer zones from thirty to seventy-five meters to protect future water security.

Pattern across all three: the ICJ tends to acknowledge these doctrines conceptually but stops at procedural or state-centric remedies, while the NGT converts them into binding, proactive, and often structural interventions.

STRUCTURAL INNOVATION: NGT AS JUDICIAL DEPARTURE

This section frames the NGT-ICJ divide as one of judicial innovation versus judicial contraction, and offers a critical assessment of that divergence.

THREE STRUCTURAL INNOVATIONS:

- Suo motu powers — The NGT may initiate cases on its own motion based on media reports or public outcry, a power affirmed in Municipal Corporation of Greater Mumbai v. Ankita Sinha, (2022) 13 S.C.C. 401 (India). The ICJ, by contrast, requires state consent under article 36 of its Statute and remains paralyzed absent an invitation to act.
- Absolute and enterprise liability — Drawing on M.C. Mehta v. Union of India, (1987) 1 S.C.C. 395 (India), the NGT holds hazardous enterprises strictly liable regardless of fault, rejecting force majeure defenses and scaling fines to enterprise size for deterrent effect. The ICJ instead adheres to state-responsibility frameworks requiring proof of a due-diligence breach.

- Continuous mandamus — The NGT keeps cases open indefinitely, supervising compliance through monitoring committees and periodic progress reports, whereas the ICJ issues a final judgment and exits, leaving enforcement to diplomacy or the U.N. Security Council.

THE CRITICAL TAKE — A DOUBLE-EDGED SWORD:

- For: This radicalism is necessary, since ecological harm moves faster than adversarial, state-centric courts can process; the NGT's flexibility offers a functional model for responsive environmental justice.
- Against: The same flexibility risks executive overreach — redrawing buffer zones or setting emission standards begins to resemble regulation rather than adjudication, without corresponding democratic accountability.

Core thesis: the NGT's greatest strength — its boundary-breaking flexibility — is also its greatest institutional vulnerability.

CONTEMPORARY FRICTION: INSTITUTIONAL BOTTLENECKS

This section shifts from theory to practice, examining how the NGT's boldness runs into constitutional and institutional limits.

1. STATUTORY GAPS

- The NGT lacks jurisdiction over the Wildlife (Protection) Act, No. 53 of 1972, India Code, and the Indian Forest Act, No. 16 of 1927, India Code, both excluded from Schedule I of its enabling statute. It may fine a factory for river pollution but cannot act on adjacent poaching or timber smuggling.
- The Tribunal has no independent enforcement arm and depends on State Pollution Control Boards and municipal bodies, which are often underfunded and subject to political pressure — leaving some of its boldest directives unenforced in practice.

2. SUPREME COURT PUSHBACK

- In State of Himachal Pradesh v. National Green Tribunal, (2023) S.C.C. OnLine S.C. (India), the Supreme Court held that the NGT cannot dictate state town-planning or development plans, marking a firm separation-of-powers boundary.
- Several suo motu shutdown orders have been set aside for failing to provide proper notice or a fair hearing, with the Supreme Court reminding the Tribunal that its specialized status does not exempt it from principles of natural justice.

3. EXECUTIVE LEVERAGE VIA APPOINTMENTS

- Chronic delays in filling the statutorily mandated ten judicial and ten expert member posts forced regional benches in Pune, Kolkata, and Chennai into partial closures.
- This escalated into a 2026 crisis, in which the Supreme Court issued emergency tenure extensions under the Tribunal Reforms Act, 2026, to keep the NGT functioning.

Synthesis: these three pressures form one connected story rather than isolated problems. The NGT's radicalism — suo motu powers, a reversed burden of proof, self-appointed expert committees — triggered a natural constitutional response: the executive slows the Tribunal through appointment delays, while the Supreme Court checks it through judicial review. Specialized environmental courts remain a strong global trend, but their durability depends on balancing innovation against constitutional limits.

CONCLUSION: THE FUTURE TRAJECTORY OF THE NGT

1. FROM EXPANSION TO CONSOLIDATION

The NGT's phase of radically rewriting its own powers has reached its institutional ceiling. With the Supreme Court enforcing separation of powers, the Tribunal's next chapter will likely emphasize procedural discipline — scientifically airtight expert reports, closer coordination with State Pollution Control Boards, and durable regulatory compliance rather than sweeping, unprompted orders.

2. INDIA'S DUAL-TRACK IDENTITY

India operates on two parallel tracks: globally, as a diplomatic rule-follower engaging through ICJ-style state sovereignty and treaty frameworks; and domestically, as host to the NGT, a boundary-pushing, polycentric enforcement pioneer. This produces a genuine paradox — India champions the doctrine of Common but Differentiated Responsibilities abroad, seeking regulatory flexibility as a developing economy, while the NGT enforces rigid, uncompromising standards at home, at times halting the very infrastructure or public projects the executive advances internationally.

3. STRENGTH AND COMPLICATION, BOTH AT ONCE

- Strength: the NGT gives India credibility as a nation that has operationalized Rio Principle 10 in practice rather than merely on paper, offering a working model for the Global South.
- Complication: that same rigor can clash with the government's own economic and diplomatic agenda, producing friction between India's international posture and its domestic enforcement record.

Final synthesis: the ICJ remains indispensable for resolving broad transboundary disputes, but is insufficient on its own for the ecological crises of the Anthropocene. Domestic, specialized courts such as the NGT — fast, flexible, and scientifically grounded — are now an essential institutional anchor, not a luxury.