

INTERNATIONAL
ENVIRONMENTAL
LAW REPORTS

Volume 4

INTERNATIONAL ENVIRONMENTAL LAW
IN NATIONAL COURTS

The fourth volume of the *International Environmental Law Reports* collects together approximately fifty decisions of national courts from twenty-six countries, all broadly related to international environmental law. The cases cover a range of environmental issues, from protected species and habitats to activities that impact on the environment – including mining, the construction of dams and waste disposal. The collection evidences different approaches to the relationship between domestic and international legal systems, and highlights many substantive and procedural environmental laws that are enjoying increasing recognition around the world. With around half of the cases having been translated into English from as many as twelve other languages, the volume provides valuable comparative insight into national legal perspectives on international environmental law.

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Volume 4

INTERNATIONAL ENVIRONMENTAL LAW
IN NATIONAL COURTS

edited by

ALICE PALMER and CAIRO A. R. ROBB

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Preface

Volume 4 of the *International Environmental Law Reports* collects together approximately fifty decisions of national courts from twenty-six countries, all broadly related to international environmental law.¹ The extent to which such decisions arise in the domestic arena depends on many factors: national jurisdictions take different approaches to the relationship between their own law and international law; the international environmental law commitments accepted by a given State differ from one country to the next; in some jurisdictions, international environmental opinion may be considered relevant to a decision even in the absence of a formal international obligation, as evidenced by the frequent reference to the Stockholm and Rio Declarations in many of the cases reported; the existence and adequacy of national implementing legislation and enforcement mechanisms will also have a bearing on the prevalence of decisions relevant to international environmental law.

In selecting the cases for this volume, we have sought to provide a broad cross-section of examples illustrating the various ways international environmental law issues and considerations can be relevant in national courts. In some cases, there is direct reliance on international environmental instruments and principles. In others, the courts have elaborated domestic approaches to environmental issues that are influenced by or contribute to international developments. However, we recognise that in most cases international considerations – whether they take the form of treaty commitments or of dialogue and debate at the international level – are only one of the factors at play for the national decision-maker, and it would be misleading to focus only on the international elements. The decisions reported here combine consideration of international obligations, broader international debates, comparative law elements and domestic factors, including issues of constitutional and procedural law, which are all necessary constituents of principled environmental decision-making. Thus the collection of cases is of necessity

¹ This supplements nine classic decisions in the field, reported in part II of volume 1 in this series.

less rigorously focused on the international dimension than were previous volumes.

Environmental protection is above all a field in which we are enjoined to think globally and act locally. In most of the decisions extracted here, national courts (at different levels of the judicial system) *act*. They each take action in some matter concerning the environment or of environmental concern. Such action is necessarily taken within the framework of the law of their own system and its remedial possibilities – whether it takes the form of an action for declaratory relief, judicial review, constitutional protection, or some private law cause of action involving secondary boycotts or defamation. International law leaves these remedial issues to each national system, while calling on these systems to provide effective remedies for rights guaranteed to individuals, or violations of public obligations, within the framework of the rule of law. One of the most illuminating aspects of the decisions is the way in which courts in different traditions use their own remedial and procedural resources to give effect to general ideas of environmental protection, dealing at the same time with a complex of ideas about the separation of powers, the proper scope of the judicial function, and the balancing of conflicting social and economic interests.

There are many differences between the decisions in this collection, having regard to the societies from which they emanate, their legal culture and material circumstances. But there are also uncanny underlying similarities, where judges are faced with similar issues of the rule of law – whether it comes to the continuation of an illegal rubbish dump in Dar es Salaam or the preservation of the snail darter in the face of a nearly completed dam in the Tennessee Valley. Cumulatively, the decisions refute the idea that environmental issues are inherently non-justiciable, or are the exclusive preserve of executive or managerial action.

In our attempt to provide a cross-section of decisions, we have selected cases from as wide a range of jurisdictions as possible, and involving a representative range of environmental issues. In some countries, there were a number of decisions to choose from; in others, the choice was limited. Where we have had to narrow the field, preference has been given to decisions that are not readily available or not yet reported in English. Our selection also recognises that international environmental law concerns both *substantive* obligations aimed at sustainable development and *procedural* obligations governing matters such as access to environmental information, participation in environmental decision-making and access to environmental justice. In what was inevitably a loaded assessment, the cases selected generally involve

decisions that could be characterised as having made a positive contribution to the development of international environmental law.

It should be noted that the volume provides only a snapshot of a complex and changing picture. In a number of cases, decisions have been followed by changes in national legislation, or have been preceded or followed by decisions in different cases which are not necessarily consistent with decisions reported here; it would take a textbook even to trace these developments let alone to assess their significance. Some attempt has, however, been made in each case to place the issues in their legal and procedural perspective, and to provide longer and more detailed head-notes with appropriate annotations. In a few cases, an editorial note at the end summarises subsequent developments.

Cases are reported in alphabetical order by country; where there is more than one case from a particular country, in chronological order. No attempt has been made to arrange them thematically, but the Digest, Table of Treaties and Index should enable rapid location of cases dealing with particular themes.

For further information on specific jurisdictions, the reader is referred to the American Society of International Law's Project on International Environmental Law in National Courts, the proceedings of which have been published by the British Institute of International and Comparative Law.² Selected essays were previously published in volume 7 issue 1 of the *Review of European Community and International Environmental Law*. Additional cases have been reported in the United Nations Environment Programme's *Compendium of Judicial Decisions in Matters Related to the Environment: National Decisions*.

These cases may be cited as 4 *IELR* followed by the relevant page number, e.g. 4 *IELR* 7.

Alice Palmer
*Foundation for International
Environmental Law and
Development (FIELD)*

Cairo Robb
*Lauterpacht Research
Centre for International
Law, University of Cambridge*

2003

² See M. Anderson and P. Galizzi (eds.), *International Environmental Law in National Courts* (BIICL, London, 2002).

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We apologise to any person who may have been inadvertently omitted from this list.

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Richard G. Tarasofsky *Special Advisor on Trade and Biodiversity, IUCN – the
World Conservation Union and Senior Associate, Ecologic – Institute for
International and European Environmental Policy*

Abbreviations

AC	Appeal Cases
ACP	Advisory Committee on Pesticides
AD	Supreme Court of the Union of South Africa, Appellate Division
AFDI	Annuaire française de droit international
AIR	All India Reporter
ALJR	Australian Law Journal Reports
All ER	All England Law Reports
ALR	Argus Law Reports
App. Cas.	Law Reports, Appeal Cases (England 1875–90)
ASCOBANS	Agreement on the Conservation of Small Cetaceans in the Baltic and North Seas
BGBI	Bundesgesetzblatt
CA	Court of Appeal
Cal	California Reports
CEPA	Canadian Environmental Protection Act
CETP	common effluent treatment plant
CITES	Convention on International Trade in Endangered Species of Wild Fauna and Flora
CLR	Commonwealth Law Reports
CMLR	Common Market Law Review
COC	Committee on Carcinogenicity (UK)
COM	Committee on Mutagenicity (UK)
Cong.Rec.	Congressional Record
CPR	Control of Pesticides Regulations
Cranch	Cranch Reports, United States Supreme Court
CTS	Consolidated Treaty Series
DFL	Decree with Force of Law (Chile)
DLR	Dominion Law Reports (Canada)
ECR	European Court Reports

EEZ	exclusive economic zone
EFZ	exclusive fishing zone
EHRR	European Human Rights Reports
EIA	environmental impact assessment
EIS	environmental impact survey
Env.LR	Environmental Law Reports
EQA	Environmental Quality Act
F.Supp.	Federal Supplement (United States)
FAO	United Nations Food and Agriculture Organization
FOE	Friends of the Earth
Geo. LJ	Georgetown Law Journal
HEC	Hydro-Electric Commission (Tasmania)
HEP	hydro-electric project
HL	House of Lords
IAEA	International Atomic Energy Agency
ICCPR	International Covenant on Civil and Political Rights
ICJ	International Court of Justice
ICJR	International Court of Justice Reports
ICOMOS	International Council of Monuments and Sites
ICR	Industrial Court Reports
IELR	International Environmental Law Reports
IJC	International Joint Commission
ILA	International Law Association
ILC	International Law Commission
ILM	International Legal Materials
ILO	International Labour Organization
IMCO	Intergovernmental Maritime Consultative Organization
IOPCF	International Oil Pollution Compensation Fund
IUCN	International Union for the Conservation of Nature
IWC	International Whaling Commission
J Env. L	Journal of Environmental Law
L.Ed.	Lawyers' Edition, Supreme Court Reports
LLDA	Laguna Lake Development Authority
Martens NRG	G. F. Martens, Nouveau recueil général
MDPA	Mines Domaniales de Potasse d'Alsace
MLJ	Malayan Law Journal
NEERI	National Environmental Engineering Research Institute
NEPA	National Environmental Policy Act (United States)
NESPAK	National Engineering Services Pakistan Ltd
NGO	non-governmental organisation

NJ	Nederlandse Jurisprudentie
NPDES	National Pollutant Discharge Elimination System
NSF	National Science Foundation
NSW	New South Wales
NYIL	Netherlands Yearbook of International Law
OAS TS	Organization of American States Treaty Series
ODA	Overseas Development Administration
OJ	Official Journal
P	Pacific Reporter
PCIJ	Permanent Court of International Justice
PCPA	Pest Control Products Act (Canada)
Pet.	Peter's United States Supreme Court Reports
QB	Queen's Bench
RGDIP	Revue générale de droit international public
RSC	Rules of the Supreme Court (Canada, England)
Rt	Norsk Rettstidende
S.Ct.	Reports of the Supreme Court (US)
SA	South African Law Reports
SAVE	Save the Vaal Environment
SCC	Supreme Court Cases (India)
SCR	Supreme Court Reports (Canada)
Sri LR	Sri Lankan Law Reports
Stat	United States Statutes at Large
TGWU	Transport and General Workers' Union
Trb.	Tractatenblad van het Koninkrijk der Nederlanden
TVA	Tennessee Valley Authority
U Pa L Rev.	University of Pennsylvania Law Review
UKTS	United Kingdom Treaty Series
UNCLOS	United Nations Convention on the Law of the Sea
UNEP	United Nations Environment Programme
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNGAOR	United Nations General Assembly Official Records
UNTS	United Nations Treaty Series
US	United States Reports (Supreme Court)
USC	United States Code
UST	United States Treaties and Other International Agreements
WAPDA	Pakistan Water and Power Development Authority

List of abbreviations

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WCED	World Commission on Environment and Development
WHO	World Health Organization
WLR	Weekly Law Reports (England)
WMO	World Meteorological Organization
WWF	Worldwide Fund for Nature
Yale LJ	Yale Law Journal

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