

## Contents

Ack	knowledgments	ge xxv
Abł	breviations	. xxxi
Tab	ble of Cases	. xxxv
1.	Law and the Environment	1
	I. Introduction	1
	A. Defining the Environment and Its Characteristics	2
	Questions and Discussion	3
	B. State of the Planet	3
	Millennium Ecosystem Assessment: Ecosystems and Human	
	Well-Being: Synthesis	3
	Questions and Discussion	16
	II. Approaches to Environmental Protection	16
	A. Private Actions	17
	<ol> <li>Nuisance, Strict Liability, and Negligence</li> </ol>	17
	Indian Council for Enviro-Legal Action v. Union of India	17
	Questions and Discussion	21
	Trail Smelter Case (U.S. v. Can.)	24
	Questions and Discussion	27
	Note on the Pulp Mills Case	28
	2. The Public Trust Doctrine	30
	United Plainsmen Association v. North Dakota State Water	
	Conservation Commission	31
	Questions and Discussion	35
	B. Public Regulation Christopher H. Schroeder, Lost in Translation: What	36
	Environmental Regulation Does That Tort Cannot Duplicate	27
	Questions and Discussion	37
	Standard Setting	42 42
	Code of Federal Regulations (U.S.), Title 16, Part 1303 – Ban of Lead-Containing Paint and Certain Consumer Products	7-
	Bearing Lead-Containing Paint	43
	2. Restrictions and Prohibitions	44
	Endangered Species Act of 1973	44
	3. Licensing	47

ix



> 4. Environmental Impact Assessment Procedures 48 OP 4.01 – Environmental Assessment, World Bank Operational Manual 48 5. Land Use Regulation 52 6. Criminal Law 52 C. Market Mechanisms 53 Christopher H. Schroeder, Lost in Translation: What Environmental Regulation Does That Tort Cannot Duplicate 54 D. Rights-Based Approaches 55 Questions and Discussion 56 III. International Environmental Law 56 A. Sources: What Is International Law? 57 Treaties 57 a. Adoption of Treaties 59 b. Compliance with Treaty Obligations 60 c. Treaty Interpretation 60 d. Enforcement 61 e. Common Environmental Treaty Techniques 61 2. Customary International Law 62 3. General Principles of Law 62 "Soft Law" 63 B. Relationship of International Law and Domestic Legal Systems 64 C. The Development of International Environmental Law 67 1. Beginnings to Stockholm 67 Stockholm Declaration on the Human Environment 68 Ouestions and Discussion 72 2. From Stockholm to Rio 73 The Rio Declaration on Environment and Development 74 Questions and Discussion 3. From Rio to Johannesburg 78 4. The World Summit on Sustainable Development 79 5. UNCSD 2012 80 D. Principles of International Environmental Law 80 1. Prevention of Harm 80 2. Precaution 81 Canada Ltée (Spraytech, Société d'arrosage) and Services des espaces verts Ltée/Chemlawn v. Hudson (Town), no. 114957 82 Questions and Discussion 85 3. The Polluter-Pays Principle 86 4. Sustainable Development 87 Case Concerning the Gabčíkovo-Nagymaros Project (Hungary v. Slovakia) 88 Jayal and Others v. India and Others 89 Questions and Discussion 90 5. Equitable Principles 90 a. Intergenerational Equity 91 Minors Oposa v. Secretary of the Department of Environment and Natural Resources

92

Contents



Contents	X
Questions and Discussion	95
b. Common but Differentiated Responsibilities	95
c. Equitable Utilization of Shared Resources	96
E. Major International Environmental Agreements	97
1. Biological Diversity and Species Agreements	97
Questions and Discussion	100
2. U.N. Framework Convention on Climate Change and the Kyoto	
Protocol	100
3. U.N. Convention on the Law of the Sea	104
4. The Ozone Agreements	106
5. Hazardous Substances and Waste	108
F. Compliance and Enforcement	110
1. State Responsibility	110
2. Compliance Procedures	112
3. Periodic State Reporting	113
4. Civil Society Petitions	114
Questions and Discussion	115
2. The Environment as a Human Rights Issue	118
I. Introduction	118
A. Tension or Complementarity?	119
Questions and Discussion	120
B. A Primer on Rights	120
<ol> <li>Human Rights and Universal Aspirations         Mary Ann Glendon, A World Made New: Eleanor Roosevel     </li> </ol>	121 T
and the Universal Declaration of Human Rights	121
Makau Mutua, The Complexity of Universalism in Human Right	S 122
Questions and Discussion	122
2. Rights of the Environment	122
Questions and Discussion	123
C. When Rights Conflict	126
Stephanie Peatling, People First, River Second Christopher Stone, Should Trees Have Standing? Towards Legal	126
Rights for Natural Objects	127
Questions and Discussion	128
Roderick Frazier Nash, The Rights of Nature: A History of	
Environmental Ethics	129
Questions and Discussion	130
II. Human Rights Approaches to Environmental Protection	130
A. Mobilizing Human Rights for the Environment	130
Dinah Shelton, Environmental Rights	130
Questions and Discussion	133
Michael R. Anderson, Human Rights Approaches to	
Environmental Protection: An Overview	134
Questions and Discussion	138
B. Critiques and Responses	138
Günther Handl, Human Rights and the Protection of the	
Environment	139



xii	•	Contents
	Questions and Discussion Luis E. Rodriguez-Rivera, Is the Human Right to Environment Recognized Under International Law? It Depends on the Source	141 2 141
	III. The Environmental Justice Dimension Hari M. Osofsky, Learning from Environmental Justice: A New	145
	Model for International Environmental Rights Questions and Discussion	145 147
	IV. Recognition of the Rights Related to the Environment in Law Philippe Sands, Principles of International Environmental Law	148
	Questions and Discussion	149
3.	An Introduction to Human Rights Origins and Theory	151
	I. The Development of Human Rights	151
	A. Introduction Imre Szabo, Historical Foundations of Human Rights and	151
	Subsequent Developments	151
	Ruti Teitel, Human Rights Genealogy	153
	Questions and Discussion	154
	<ul><li>B. Religious, Cultural, and National Legal Antecedents</li><li>1. Religious Traditions</li></ul>	154
	1. Religious Traditions Questions and Discussion	154 156
	2. Philosophical and Cultural Roots	150
	Questions and Discussion	159
	3. Historical Laws of Local Nature	160
	Questions and Discussion	163
	C. International Law on Specific Issues Before the Twentieth Century	163
	1. Religious Liberty	163
	2. Abolition of Slavery and the Slave Trade	164
	3. The Emergence of Humanitarian Law	166
	4. Injury to Aliens	167
	Questions and Discussion	167
	D. The Early Twentieth Century	168
	<ol> <li>Economic and Social Rights: Capitalism, Industrialization, and the Formation of the International Labour Organization</li> </ol>	168
	2. The League of Nations and Minorities Treaties	
	3. Civil and Political Rights for Women	170 171
	Questions and Discussion	171
	E. Generalizing Human Rights in Global and Regional Systems of	-/-
	Protection	172
	1. Standard Setting (1948–1969)	173
	2. Development of Compliance Mechanisms (1967–1998)	177
	3. Individual Complaints Procedures	180
	4. From State to Individual Responsibility (1998–present)	182
	F. Normative and Institutional Evolution	182
	Ouestions and Discussion	185



Contents	xiii
G. The Challenge of Human Rights in the Realm of the Domaine Réserv	é 185
Charter of the United Nations	187
Henry Steiner, The Youth of Rights	187
Questions and Discussion	188
II. The Idea of Human Rights	188
A. The Nature of Human Rights  Jerome J. Shestack, <i>The Philosophical Foundations of Human</i>	189
Rights	189
Eugene Kamenka, Human Rights, Peoples' Rights	191
Questions and Discussion	191
B. A Case for Human Rights	192
Louis Henkin, The Age of Rights	192
Questions and Discussion	194
C. Critiques of Human Rights and Responses Thereto	195
Cass Sunstein, Rights and Their Critics Upendra Baxi, Voices of Suffering, Fragmented Universality, and	
the Future of Human Rights	199
Questions and Discussion	201
Karl Klare, Legal Theory and Democratic Reconstruction	202
Questions and Discussion A.H. Robertson & J.G. Merrills, Human Rights in the World An Introduction to the Study of the International	203
Protection of Human Rights	203
Question and Discussion	204
III. Perspectives on Human Rights Claims	204
A. Natural Law	204
J. Shand Watson, Theory and Reality in the International Protection of Human Rights	205
Question and Discussion	206
B. Legal Positivism	207
Questions and Discussion	207
C. Feminist Theory	208
Hilary Charlesworth, Feminist Ambivalence About International Law	208
Questions and Discussion	210
D. New Stream Scholarship	211
Deborah Z. Cass, Navigating the Newstream: Recent Critical Scholarship in International Law	211
Questions and Discussion	213
E. Human Dignity	214
Rhoda E. Howard, Dignity, Community, and Human Rights	214
Oscar Schachter, Human Dignity as a Normative Concept	215
Paolo G. Carozza, Human Dignity and Judicial Interpretation of Human Rights: A Reply [to Christopher McCrudden]	
Questions and Discussion	218
Jack Donnelly, Cultural Relativism and Universal Human Right	



xiv	C	Contents
	Rosalyn Higgins, Problems and Process: International Law	
	AND HOW WE USE IT	219
	Questions and Discussion	220
	IV. Individual Duties as a Means of Social Ordering	220
	Universal Declaration of Human Responsibilities (Proposed by	
	InterAction Council)	220
	Questions and Discussion	222
4.	The International Protection of Human Rights	224
	I. Introduction	224
	II. The Universal Declaration of Human Rights	225
	Universal Declaration of Human Rights	226
	Questions and Discussion	229
	III. U.N. Treaties: The Core Agreements	231
	Questions and Discussion	232
	Matthew Craven, The International Covenant on Economic,	
	Social, and Cultural Rights: A Perspective on Its	
	Development	232
	Questions and Discussion	236
	A. The Obligations Imposed by the Covenants	236
	The Nature of the General Legal Obligation Imposed on States	
	Parties to the Covenant Human Rights Committee	237
	Questions and Discussion	241
	General Comment No. 3 [of the Committee on Economic,	
	Social, and Cultural Rights]	242
	General Comment No. 9 [of the Committee on Economic,	
	Social, and Cultural Rights]	<del>2</del> 43
	General Comment No. 14 [of the Committee on Economic,	
	Social, and Cultural Rights]	<sup>2</sup> 45
	Questions and Discussion  B. Implementation of the Covenants by the Treaty Committees	<sup>2</sup> 47
	Laurence R. Helfer & Anne-Marie Slaughter, <i>Toward a Theory of</i>	248
	Effective International Adjudication	248
	Questions and Discussion	251
	IV. Regional Systems for the Protection of Human Rights	-
	Dinah Shelton, The Promise of Regional Human Rights Systems	251
		251
	V. Economic, Social, and Cultural Rights: Justiciability	255
	Republic of South Africa v. Grootboom	256
	Questions and Discussion	258
	VI. Human Rights and Environmental Harm	259
	Social and Economic Rights Action Center and the Center for	-6-
	Economic and Social Rights v. Nigeria	260 260
	Questions and Discussion	269
	VII. Common Aspects of Human Rights Treaties	270
	A. Reservations VIENNA CONVENTION ON THE LAW OF TREATIES	270
	VIENNA CONVENTION ON THE LAW OF TREATIES	270



Con	Contents		
		General Comment No. 24 (52) [of the Human Rights Committee]	272
		Questions and Discussion	275
		Report of the International Law Commission on the Work of Its	-/>
		Forty-Ninth Session	276
		Questions and Discussion	
		B. Denouncing and Reacceding with a Reservation	277
		Rawle Kennedy v. Trinidad and Tobago	277 278
		Questions and Discussion	278
		C. Limitations and Derogations from Human Rights	279
5.	In	ternational Human Rights Institutions and Procedures	281
	I.	Introduction	281
	П.	The U.N. Charter Bodies	284
		A. The Security Council	284
		Questions and Discussion	286
		B. General Assembly	286
		1. The Former Commission and Subcommission	287
		2. The Human Rights Council	291
		Philip Alston, Reconceiving the U.N. Human Rights Regime:	
		Challenges Confronting the New U.N. Human Rights Council	292
		GENERAL ASSEMBLY RESOLUTION 60/251	293
		Questions and Discussion	294
		Fatma Zohra Ksentini, Special Rapporteur, Review of Further	/ !
		Developments in Fields with Which the Sub-Commission Has	
		Been Concerned: Human Rights and the Environment	295
		C. Human Rights Council Special Procedures	297
		Special Procedures of the Human Rights Council	297
		Questions and Discussion	298
		1. Fact-Finding	299
		Manual of the United Nations Human Rights Special Procedures	300
		Questions and Discussion	303
		Report of the Special Rapporteur on the Adverse Effects of the Illicit	
		Movement and Dumping of Toxic and Dangerous Products and	
		Wastes on the Enjoyment of Human Rights	304
		Press Release, Toxic Waste: U.N. Expert Releases Report on	
		"Probo Koala" Incident	307
		2. Norm Development	307
		Report of the Special Rapporteur on the Adverse Effects of the Illicit	
		Movement and Dumping of Toxic and Dangerous Products and	
		Wastes on the Enjoyment of Human Rights	307
		Questions and Discussion	317
		3. The 1503 Procedure	317
		Office of the High Commissioner for Human Rights, Human	
		Rights Council Complaints Procedure	317
		Questions and Discussion	319
		4. The 1235 Procedure	320
		5. The Role of Nongovernmental Organizations	320



xvi

C	Contents
C. International Court of Justice	320
D. The Secretariat	321
E. Economic and Social Council	322
III. The Treaty Committees	322
A. Introduction	322
Questions and Discussion	327
B. Committee Complaints Procedures	328
1. General Procedures	328
Office of the High Commissioner for Human Rights, Fact Sheet No. 7/Rev. 1, Complaints Procedure	328
2. Human Rights Committee	333
Office of the High Commissioner for Human Rights, Fact Sheet No. 7/Rev. 1, Complaints Procedures	
·	333
IV. Regional Systems	335
A. The European Human Rights System Thomas Buergenthal, The Evolving International Human Rights	336
System	336
Questions and Discussion	338
B. The American Human Rights System Thomas Buergenthal, <i>The Evolving International Human Rights</i>	339
System	339
Questions and Discussion	341
Interpretation of the American Declaration of the Rights and Duties of Man Within the Framework of Article 64 of the	, ,
American Convention on Human Rights	3 <del>42</del>
Questions and Discussion	343
<ol> <li>Economic and Social Rights (Including Environmental Rights) in the American Human Rights System: Applicable Norms</li> </ol>	
Article 26 - Progressive Development, American Convention on	343
Human Rights	344
Matthew Craven, The Protection of Economic, Social, and	
Cultural Rights Under the Inter-American System of Human	
Rights	344
Question and Discussion	346
2. Environmental Rights	347
Article 11 – Right to a Healthy Environment, Additional Protocol to the American Convention on Human Rights	
in the Area of Economic, Social, and Cultural Rights	347
Questions and Discussion	347
C. The African Human Rights System	348
Thomas Buergenthal, The Evolving International Human Rights System	348
1. The Banjul Charter	350
African [Banjul] Charter on Human and Peoples' Rights, 1982	350
Questions and Discussion	351
2. The Work of the African Commission on Human and Peoples'	
Rights and the Environment	351



Coı	ntents	xvii
	3. The Relationship Between the New Court and the Commission Coalition for an Effective African Court on Human and Peoples Rights, About the African Court  African [Banjul] Charter on Human and Peoples' Rights Protocol to the African Charter on Human and Peoples' Rights on the Establishment of the African Court on Human and Peoples' Rights	352 353 354 354
	Questions and Discussion	355
6.	Procedural Human Rights and the Environment	. 356
	I. Introduction	356
	II. Access to Environmental Information A. Environmental Instruments and Jurisprudence B. Human Rights Texts and Jurisprudence  Case of Bladet Tromsø & Stensaas v. Norway  Questions and Discussion  Claude Reyes et al. v. Chile  Questions and Discussion	357 358 360 368 369 380
	<ul><li>III. The Right to Public Participation in Decision Making</li><li>A. Environmental Instruments</li><li>B. Human Rights Texts</li></ul>	381 381 382
	<ul> <li>IV. The Rights of Access to Justice and to a Remedy for Environmental Harm</li> <li>A. The Right to a Remedy in Human Rights Instruments</li> <li>Okyay et al. v. Turkey</li> <li>Questions and Discussion</li> <li>B. The World Bank Inspection Panel</li> <li>World Bank Inspection Panel, Investigation Report, Ghana: West</li> <li>African Gas Pipeline Project</li> <li>Questions and Discussion</li> </ul>	383 383 385 391 393
	V. The Aarhus Convention and Complaints Procedure  Convention on Access to Information, Public Participation in Decision Making, and Access to Justice in Environmental Matters  REPORT OF THE COMPLIANCE COMMITTEE ON ITS SIXTEENTH MEETING REPORT OF THE COMPLIANCE COMMITTEE ON ITS EIGHTEENTH MEETING Ole W. Pedersen, European Environmental Human Rights and Environmental Rights: A Long Time Coming? Questions and Discussion	408 408 418 429 429 430
	VI. A Combined Process: Prior Informed Consent World Bank Information Center, <i>Rebuked by Internal</i>	431
	Investigation, World Bank Plans to Do More in DRC Forest Sector, but Will It Do Better?  Questions and Discussion	43 <sup>2</sup> 435
	2 acoutoin aria 2 nocatorori	+ > >



V111		ontents
7.	Substantive Human Rights and the Environment	436
	I. Introduction	436
	II. The Rights to Life and Health	436
	Convention on the Rights of the Child	437
	A. U.N. Jurisprudence and Practice	438
	Questions and Discussion	439
	Brun v. France	440
	B. Regional Jurisprudence	443
	Öneryildiz v. Turkey	445
	Questions and Discussion	456
	C. National Jurisprudence	457
	Clean Air Foundation Limited & Gordon David Oldham v.	
	Government of the Hong Kong Special Administrative Region	<b>4</b> 57
	Mehta v. Union of India et al.	460
	Questions and Discussion	462
	III. A Right to Water	463
	A. Human Rights Law at the Global Level	464
	U.N. Development Programme, Human Development Report	
	2006, Beyond Scarcity: Power, Poverty, and the Global Water	
	Crisis	464
	Human Rights Council, Report of the U.N. High Commissioner	
	for Human Rights on the Scope and Content of the Relevant	
	Human Rights Obligations Related to Equitable Access to Safe	1
	Drinking Water and Sanitation Under International Human	
	Rights Instruments	467
	Questions and Discussion	471
	Comments of the Committee on Economic, Social, and Cultural	
	Rights	472
	B. The Organization of American States	473
	The Situation of Human Rights in Cuba, Seventh Report	473
	C. The African Commission on Human and Peoples' Rights	475
	Questions and Discussion	476
	D. National Water Rights	476
	John Scanlon, Angela Cassar, & Noemi Nemes, Water as a	
	Human Right?	476
	Stephen Hodgson, Modern Water Rights: Theory and Practice	477
	Questions and Discussion	486
	IV. Right to Respect for Privacy, Family Life, and Home	487
	Questions and Discussion	490
	López Ostra v. Spain	490
	Questions and Discussion	494
	Kyrtatos v. Greece	495
	Questions and Discussion	499
	Taşkın et al. v. Turkey	500
	Questions and Discussion	502
	Fadeyeva v. Russia	503
	Questions and Discussion	511



Coı	ntents	xix
	V. Right to Property	512
	Metropolitan Nature Reserve v. Panama	513
	Questions and Discussion	515
	Lars and Astrid Fägerskjöld v. Sweden	515
	Questions and Discussion	517
	VI. The Right to a Healthy or Safe Environment	519
	A. International Guarantees	519
	B. National Guarantees of the Right to a Safe and Healthy Environment Ole W. Pedersen, European Environmental Human Rights and	520
	Environmental Rights: A Long Time Coming?	520
	1. The United States	521
	Montana Environmental Information Center et al. v. Department	
	of Environmental Quality	5 <sup>2</sup> 3
	Questions and Discussion  Comments Litigating State Constitutional Protections	530
	Comment: Litigating State Constitutional Protections 2. South Africa	530
	Fuel Retailers Association of Southern Africa v. Director-General Environmental Management, Department of Agriculture,	53 <sup>2</sup>
	Conservation and Environment, Mpumalanga Province et al.	532
	Questions and Discussion	543
8.	Indigenous Peoples, Rights, and the Environment	• • 545
	I. Introduction	545
	II. Theoretical Approaches	545
	Benedict Kingsbury, Reconciling Five Competing Conceptual Structures of Indigenous Peoples' Claims in International and	
	Comparative Law Questions and Discussion	545
		557
	III. International Instruments	557
	INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS	558 8
	U.N. Declaration on the Rights of Indigenous Peoples Convention (No. 169) Concerning Indigenous and Tribal	558
	Peoples in Independent Countries	564
	Questions and Discussion	567
	IV. The ICCPR and Minority Rights	567
	Human Rights Committee, General Comment No. 12: The Right	507
	to Self-Determination of Peoples	567
	General Comment No. 23: The Rights of Minorities	568
	Ominayak and the Lubicon Lake Band v. Canada	569
	Questions and Discussion	573
	Apirana Mahuika et al. v. New Zealand	573
	V. The OAS and the Development of Sui Generis Rights	577
	Report on the Situation of Human Rights in Ecuador	577
	Mayagna (Sumo) Awas Tingni Community v. Nicaragua	580
	Questions and Discussion	584
	Case of the Saramaka People v. Suriname	586
	Questions and Discussion	602



XX		(	ontents
	VI.	. African Regional Law	602
		. National Laws and Jurisprudence	610
	V 11.	A. Australia	610
		Mabo et al. v. Queensland (No. 2)	610
		Questions and Discussion	623
		B. The United States	623
		Mary and Carrie Dann v. United States	626
		Questions and Discussion	639
		C. Botswana	640
		Sesana and Others v. Attorney General, High Court	640
	VIII.	. Indigenous Rights in Environmental Agreements	652
		A. The Convention on Biological Diversity	652
		Bonn Guidelines on Access to Genetic Resources and Fair and	
		Equitable Sharing of the Benefits Arising out of Their	
		Utilization	653
		Questions and Discussion	659
		B. Climate Change, Reducing Emissions from Deforestation in	
		Developing Countries, and Forest Peoples	659
		United Nations Collaborative Programme on Reducing	
		Emissions from Deforestation and Forest Degradation in	6
		Developing Countries  Friends of the Forth PEDD Mythe A Critical Project of Property	659 1
		Friends of the Earth, REDD Myths: A Critical Review of Proposec Mechanisms to Reduce Emissions from Deforestation and	ι
		Degradation in Developing Countries	661
		Deglacation in Developing Soundres	001
9.	Ηι	ımanitarian Crises: Armed Conflicts and Other Disasters	666
	I.	Introduction	666
		Elizabeth Ferris, Natural Disaster and Conflict-Induced	
		Displacement: Similarities, Differences, and Inter-Connections	666
	II.	Human Rights, the Environment, and Armed Conflict	670
		A. The Relationship of Humanitarian Law to Human Rights Law	671
		Statement by Emanuela-Chiara Gillard, ICRC Legal Adviser	671
		Legal Consequences of the Construction of a Wall in the	
		Occupied Palestinian Territory	673
		Questions and Discussion	677
		B. The Role of Natural Resources and the Environment in Armed	
		Conflicts	678
		From Conflict to Peacebuilding: The Role of Natural Resources	( (
		and the Environment  Questions and Discussion	678 681
		C. The Law of Armed Conflict	681
		Protocol Additional to the Geneva Conventions of 12 August 1949	
		and Relating to the Protection of Victims of International	,
		Armed Conflicts (Protocol 1)	684
		Antoine Bouvier, Protection of the Natural Environment in Time	~ ~ 7
		of Armed Conflict	688
		Questions and Discussion	691



Con	tents	xxi
	D. Claims for Environmental Damage	691
	U.N. Compensation Commission, Governing Council Report and Recommendations Made by the Panel of Commissioners Concerning	ĺ
	the Third Installment of "F4" Claims	694
	Desk Study on the Environment in Iraq	715
	Questions and Discussion	726
	Behrami & Behrami v. France; Saramati v. France, Germany &	/
	Norway	727
	Questions and Discussion	735
	E. ICJ Opinions and Judgments	736
	F. Accountability	737
	III. Environmental Disasters and Their Aftermath	738
	A. Industrial Accidents	738
	Draft Principles on the Allocation of Loss in the Case of	
	Transboundary Harm Arising out of Hazardous Activities	740
	Questions and Discussion	742
	Case of Budayeva et al. v. Russia	743
	Questions and Discussion	754
	B. Natural Disasters and the Responsibility to Protect	755
	Linda A. Malone, The Responsibility to Protect Haiti Seth Mydans, Myanmar Faces Pressure to Allow Major Aid Effort	756
	Françoise Bouchet-Saulnier, Myanmar – Responsibility to Protect?	759 760
	Roberta Cohen, Reconciling R2P with IDP Protection	760
	Questions and Discussion	764
	IV. Refugees	764
	Ethan Goffman, Environmental Refugees: How Many, How Bad?	765
	Statement by Emanuela-Chiara Gillard, ICC Legal Adviser	767
	Questions and Discussion	770
	UNEP Balkans, Managing the Kosovo Refugee Crisis:	
	Environmental Consequences	771
10.	$\label{thm:conditional} Environmental \ Rights \ and \ International \ Finance: \ The \ World \ Bank \ Example \ .$	• 779
	I. Intergovernmental Financial Institutions and Their Origins	779
	IBRD Articles of Agreement: Article I	780
	Questions and Discussion	780
	Bank Information Center, Multilateral Development Banks and Burma	-8-
		782
	II. The World Bank and Environmental Rights	783
	A. The Debate over Bank Policies  Kevin Huyser, Sustainable Development: Rhetoric and Reform at	783
	the World Bank	783
	Questions and Discussion	78 <sub>7</sub>
	B. The World Bank Inspection Panel	791
	1. Beginnings	791
	Bradford Morse & Thomas R. Berger, Sardar Sarovar: The Report	1 )
	of the Independent Review	791
	Questions and Discussion	804



XXII		Contents
	2. Establishment of the Inspection Panel	804
	IBRD Resolution 93–10 and IDA Resolution 93–6	804
	Questions and Discussion	808
	Review of the Resolution Establishing the Inspection Panel:	
	Clarification of Certain Aspects of the Resolution	809
	Conclusions of the Board's Second Review of the Inspection	
	Panel	810
	Questions and Discussion	812
	Nepal: Proposed Arun III Hydroelectric Project and Restructuring	_
	of the Arun III Access Road Project	817
	Questions and Discussion	831
	Yacyretá Hydroelectric Project Argentina/Paraguay Panel	
	Report and Recommendation to the Executive Directors of the IBRD	
	Questions and Discussion	832 839
	C. Office of Compliance Advisor and Ombudsman	841
	Nathalie Bernasconi-Osterwalder & David Hunter,	041
	Democratizing Multilateral Development Banks	841
	LEAT Bulyanhulu Complaint to IFC/MIGA Compliance	- 7-
	Advisor/Ombudsman '	843
	CAO Assessment Report Summary	850
	LEAT, Assessment Summary of the Complaint Regarding	
	MIGA's Guarantee of the Bulyanhulu Gold Mine,	
	Tanzania	851
	Questions and Discussion	861
11.	Human Rights, the Environment, and Corporate Accountability	863
	I. Multinational Corporations	865
	Eric W. Orts, The Legitimacy of Multinational Corporations	865
	II. The Rights of Corporations	871
	Case of Verein Gegen Tierfabriken Schweiz (Vgt) v. Switzerland	871
	Case of Pine Valley Developments Ltd and Others v. Ireland	879
	Matos e Silva, Lda., et al. v. Portugal	883
	III. International Attempts to Regulate Corporations	888
	Report of the U.N. High Commissioner on Human Rights and	000
	Responsibilities of Transnational Corporations and Related	
	Business Enterprises with Regard to Human Rights	889
	Questions and Discussion	895
	A. OECD Guidelines	897
	OECD Guidelines for Multinational Enterprises	897
	Questions and Discussion	902
	B. ILO Tripartite Declaration	903
	Tripartite Declaration of Principles Concerning Multinational	
	Enterprises and Social Responsibility	903
	Questions and Discussion	905
	C. Norms on the Responsibilities of Transnational Corporations	906



Contents	xxiii
David Weissbrodt & Muria Kruger, Norms on the Responsibilities	
of Transnational Corporations and Other Business Enterprises	
with Regard to Human Rights	906
Norms on the Responsibilities of Transnational Corporations and	
Other Business Enterprises with Regard to Human Rights	907
Questions and Discussion	910
Promotion and Protection of Human Rights	911
IV. Self-Regulation	912
Business and Human Rights: Mapping International Standards of Responsibility and Accountability for Corporate Acts	913
Questions and Discussion	915
The Valdez Principles	915
Questions and Discussion	916
Anita Margrethe Halvorssen, Book Review, Changing Course:	
A Global Business Perspective on Development and the	
Environment, by Stephen Schmidheiny with the Business	_
Council for Sustainable Development	918
Questions and Discussion	919
V. Domestic Regulation	919
Questions and Discussion	921
A. National Legislative Measures	921
Michael Ewing-Chow, First Do No Harm: Myanmar Trade	
Sanctions and Human Rights	921
Burmese Freedom and Democracy Act of 2003	923
Questions and Discussion  P. Givil Litigation The U.S. Alice Test Statute Everyle	925
<ul><li>B. Civil Litigation – The U.S. Alien Tort Statute Example</li><li>1. The Alien Tort Statute</li></ul>	926
<ol> <li>The Alien Tort Statute         Harold Hongju Koh, Transnational Public Law Litigation     </li> </ol>	927
Questions and Discussion	927
Sosa v. Alvarez-Machain	930 931
Questions and Discussion	934
Ralph Steinhardt, Laying One Bankrupt Critique to Rest: Sosa v.	7.7
Alvarez Machain and the Future of Human Rights Litigation in	
U.S. Courts	935
2. Litigating Environmental Claims Under the ATS	936
Richard L. Herz, Litigating Environmental Abuses Under the	
Alien Tort Claims Act: A Practical Assessment	936
Benal v. Freeport-McMoran, Inc.	937
Esther Kiobel, et al. v. Royal Dutch Petroleum Company	941
Flores v. Southern Peru Copper Corp.	955
Questions and Discussion	963
Provincial Government of Marinduque v. Placer Dome, Inc.,	- 6 -
Barrick Gold Corp.	963
VI. International Complaints and Investigations	970
Olivier De Schutter, Promotion and Protection of All Human	
Rights, Civil, Political, Economic, Social, and Cultural Rights,	
Including the Right to Development	970



xxiv	Contents
Raquel Rolnik, Promotion and Protection of All Human Rights, Civil, Political, Economic, Social, and Cultural Rights, Including the Right to Development	054
	974
Questions and Discussion	975
Index	977