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978-0-521-86812-9 - International Environmental Law: Fairness, Effectiveness, and World Order
Elli Louka
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International Environmental Law

This book analyzes the law and policy for the management of global common resources. As competing demands on the global commons are increasing, the protection of the environment and the pursuit of growth give rise to all sorts of conflicts. The book analyzes issues in the protection of the global commons from fairness, effectiveness, and world order perspectives. The author examines whether current policy making and future trends point to a fair allocation of global common resources that will be effective in protecting the environment and in the pursuit of sustainable development. The author looks at the cost effectiveness of international environmental law and applies theories of national environmental law to international environmental problems. Chapters include analysis of areas such as marine pollution, air pollution, fisheries management, transboundary water resources, biodiversity, hazardous and radioactive waste management, state responsibility, and liability.

Elli Louka is the founder of Alphabetics Development & Investment (ADI), a company devoted to environment and development. Louka was a Senior Fellow at the Orville H. Schell Center for International Human Rights at Yale Law School and a Ford Foundation Fellow at New York University School of Law. Dr. Louka is currently the recipient of a Marie Curie Fellowship provided by the European Commission of the European Union. Other selected publications by Dr. Louka include *Conflicting Integration: The Environmental Law of the European Union* (2004), *Biodiversity and Human Rights* (2002), and *Overcoming National Barriers to International Waste Trade* (1994).

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Foreword

Law, as Dr. Elli Louka vividly demonstrates in this extraordinary book, is most usefully conceived as a process of clarifying and implementing the common interests of politically relevant actors. This conception is indispensable for understanding the development of international environmental law. The spread of industrialization, with its ever more intensive uses of the resources of the planet, followed by the evolution of a global civilization of science and technology and, in part as a consequence of those developments, the explosion of the population of the planet from 1.6 billion people in 1900 to 2.5 billion in 1950 and to more than 6 billion in 2000, have combined to put unprecedented and unrelenting stress on the ecological systems on which the life of our species depends. No other area of lawmaking and law-applying makes so clearly and vividly manifest the indispensable functions of all law: the maintenance of minimum order, the allocation and regulation of the use of scarce resources, and the conservation and allocation of the benefits and burdens of the world's resources in ways consistent with shared conceptions of equity.

Approaching this subject as if it could be studied as a body of static rules would be sterile. Instead, Dr. Louka presents a dynamic picture, in which the diverse actors in the international lawmaking process clarify key principles such as sovereignty over national resources, precautionary principles with respect to equitable cost-sharing of environmental externalities, principles of sustainable development, and common as well as differentiated responsibilities. Dr. Louka then shows how those principles are being applied in each of the major areas of international environmental law. Nor can general international law be excluded from such an examination, for the legal focus on the environment also has driven major changes in general international law, which has acknowledged the "tragedy of commons" and in response has authorized an increasing enclosure and nationalization of resources that for centuries had been part of the *res communis omnium*.

Using as a framework this dynamic process in which international environmental law is clarified, prescribed, and implemented, Dr. Louka reviews and synthesizes past trends and projections of probable future trends with respect to (1) the marine environment; (2) shared water resources; (3) fisheries resources; (4) the conservation of biodiversity; (5) air; (6) trade and environment; and (7) the disposal of hazardous and radioactive waste. Cutting across all of these trends and projection studies are the international efforts to establish and police reporting and information-sharing

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regimes, many now driven by the daunting challenge of prescribing for some measure of liability in circumstances in which acts with the potential for causing significant transnational damage are not prohibited by international law. One of the many strengths of Dr. Louka's book is that it presents in extraordinarily rich detail the entire spectrum of the modern process of international environmental law.

Much of the writing in contemporary international environmental law is passionately and uncritically advocative. Although Dr. Louka's book is plainly animated by a deep concern for the preservation of the environment of the planet and the realization that in the context of a global civilization of science and technology, it can be protected only by effective international efforts, the stance adopted is not uncritical and Dr. Louka never surrenders the scholarly role. Precisely because some of the areas that Louka treats are – good intentions notwithstanding – marked by missteps or – serious efforts notwithstanding – have registered no significant successes, Dr. Louka's book will be important for the practitioner in the vineyard of international environmental law no less than for the political leaders who are charged with its development.

Dr. Louka has produced a remarkable book that will be of great value to the profession.

W. Michael Reisman
Yale Law School
New Haven, Connecticut
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Abbreviations

AAUs/assigned amount units (of emissions)
ACCOBAMS/Agreement on the Conservation of Cetaceans of the Mediterranean and the Black Seas
ACP/African, Caribbean and Pacific (countries)
ACTO/Amazon Cooperation Treaty Organization
AIA/Advanced Informed Agreement (procedure)
APFIC/Asia Pacific Fishery Commission
ASCIs/Areas of Special Conservation Interest
ASCOBANS/Agreement on the Conservation of Small Cetaceans of the Baltic and North Seas
ASEAN/Association of South East Asian Nations
ATS/Antarctic Treaty System

BAT/best available technique
BATNEEC/best available technology not entailing excessive costs
BEP/best environmental practice

CAMPs/Coastal Areas Management Programmes
CBD/Convention on Biological Diversity
CBNRM/community-based natural resource management
CCAMLR/Convention for the Conservation of Antarctic Marine Living Resources
CCAS/Convention on the Conservation of Antarctic Seals
CCRF/Code of Conduct for Responsible Fisheries
CDM/Clean Development Mechanism
CDS/Catch Documentation Scheme
CECAF/Committee of the Eastern Central Atlantic Fisheries
CERCLA/Comprehensive Environmental Response, Compensation and Liability Act
CERs/certified emissions reductions
CFCs/chlorofluorocarbons
CGIAR/Consultative Group on International Agricultural Research
CIAT/International Center for Tropical Agriculture
CIFOR/Center for International Forestry Research
CIMMYT/Center for the Improvement of Maize and Wheat
CIP/International Potato Center
CITES/Convention on International Trade in Endangered Species of Wild Flora and Fauna
CLRTAP/Convention on Long-Range Transboundary Air Pollution
COP/Conference of the Parties

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CRTD/Convention on Civil Liability for Damage Caused During Carriage of Dangerous Goods by Road, Rail and Inland Navigation Vessels
CSC/Convention on Supplementary Compensation for Nuclear Damage
CSD/Commission on Sustainable Development
CTE/Committee on Trade and Environment

DSB/Dispute Settlement Body
DWFS/distant water fishing states

EBRD/European Bank for Reconstruction and Development
EC/European Community
ECE/Economic Commission for Europe
ECJ/European Court of Justice
ECOSOC/Economic and Social Council of the United Nations
EEA/European Environment Agency
EEC/European Economic Community
EEZ/Exclusive Economic Zone
EIA/Environmental Impact Assessment
EMEP/Cooperative Programme for Monitoring and Evaluation of the Long-Range Transmission of Air Pollutants in Europe
EPA/Environmental Protection Agency
ERUs/Emission Reduction Units
ESCWA/Economic and Social Commission for Western Asia
ETS/European Treaties Series
EU/European Union
EUROBATS/Agreement on the Conservation of Bats in Europe

FAO/Food and Agriculture Organization
FFA/Forum Fisheries Agency
FFVs/foreign fishing vessels
FOC/flag of convenience

GAO/General Accounting Office
GATS/General Agreement on Trade in Services
GATT/General Agreement on Tariffs and Trade
GEF/Global Environment Facility
GESAMP/Joint Group of Experts on the Scientific Aspects of Marine Environmental Protection
GFCM/General Fisheries Council of the Mediterranean
GPA/Global Programme of Action

HELCOM/Helsinki Convention for the Protection of the Baltic Sea

IAEA/International Atomic Energy Agency
IARCs/International Agricultural Research Centers
IATP/Institute for Agriculture and Trade Policy
IATTC/Inter-American Tropical Tuna Commission
IBPGR/International Board for Plant Genetic Resources
IBRD/International Bank for Reconstruction and Development
ICARDA/International Center for Agricultural Research in Dry Areas
ICARM/Integrated Coastal and River Basin Management
ICCAT/International Convention for the Conservation of Atlantic Tunas
ICDM/Integrated Conservation and Development Management
ICJ/International Court of Justice
ICNAF/International Convention for the Northwest Atlantic Fisheries
ICPDR/International Commission for the Protection of the Danube River
ICPR/International Commission for the Protection of the Rhine
ICRAF/International Center for Research in Agroforestry
ICRISAT/International Crops Research Institute for the Semi-Arid Tropics
ICZM/Integrated Coastal Zone Management

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IDPs/internally displaced persons
IFPRI/International Food Policy Research Institute
IITA/International Institute for Tropical Agriculture
ILC/International Law Commission
ILO/International Labor Organization
ILRI/International Livestock Research Institute
IMDG/International Maritime Dangerous Goods (Code)
IMF/International Monetary Fund
IMO/International Maritime Organization
INBO/International Network of Basin Organizations
IOFC/Indian Ocean Fishery Commission
IOTC/Indian Ocean Tuna Commission
IPCC/Intergovernmental Panel on Climate Change
IPF/Intergovernmental Panel on Forests
IPGRI/International Plant Genetic Resources Institute
IRBM/Integrated River Basin Management
IRBO/International River Basin Organizations
IRRI/International Rice Research Institute
ISA/International Seabed Authority
ISNAR/International Service for National Agricultural Research
ITLOS/International Tribunal for the Law of the Sea
ITP/individual tradable permit
ITQs/individual transferable quotas
ITTA/International Tropical Timber Agreement
ITTO/International Tropical Timber Organization
IUCN/International Union for the Conservation of Nature
IUU/illegal, unreported, and unregulated fishing
IWC/International Whaling Commission
IWIC/International Waste Identification Code
IWRM/Integrated Water Resources Management

LDC/London Dumping Convention
LLRWA/Low-Level Radioactive Waste Act
LULUCF/land-use, land-use change, and forest

MAP/Mediterranean Action Plan
MDBC/Murray-Darling Basin Commission
MPAs/Marine Protected Areas
MTAs/Material Transfer Agreements

NAFC/Northwest Atlantic Fisheries Convention
NAFO/Northwest Atlantic Fisheries Organization
NAFTA/North American Free Trade Agreement
NAMMCO/North Atlantic Marine Mammals Commission
NASCO/North Atlantic Salmon Conservation Organization
NATO/North Atlantic Treaty Organization
NEA/OECD/Nuclear Energy Agency of the Organization for Economic Co-operation and Development
NEAFC/North East Atlantic Fisheries Commission
NEPA/National Environmental Policy Act
NGOs/nongovernmental organizations
NIMBY/not in my backyard
NPAFC/North Pacific Anadromous Stocks Commission
NPFSC/North Pacific Fur Seals Commission
NWPA/Nuclear Waste Policy Act

OAS/Organization of American States
OAU/Organization of African Unity
ODA/Official Development Assistance
ODS/Ozone Depleting Substances

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OECD/Organization for Economic Co-operation and Development
OPRC/Oil Pollution Preparedness, Response, and Co-operation
OSPAR/Convention for the Protection of the Marine Environment of the North East Atlantic

PCA/Permanent Court of Arbitration
PCIJ/Permanent Court of International Justice
PGR/Plant Genetic Resources
PIC/prior informed consent
POPs/persistent organic pollutants
PRTRs/pollutant release and transfer registers

RAC/Regional Activity Centre
RBAs/River Basin Authorities
RBMP/River Basin Management Plan
RBOs/River Basin Organizations
RCRA/Resource Conservation and Recovery Act
RFOs/Regional Fisheries Organizations

SAARC/South Asian Association for Regional Cooperation
SADC/Southern African Development Community
SARA/Superfund Amendment and Reauthorization Act
SBSTA/Subsidiary Body for Scientific and Technological Advice
SEAFO/South East Atlantic Fisheries Organization
SEA/Strategic Environmental Assessment
SOLAS/International Convention for the Safety of Life at Sea
SPFFA/South Pacific Forum Fisheries Agency
SPREP/South Pacific Regional Environment Program
SPS/Sanitary and Phytosanitary Measures

TACs/total allowable catches
TBNRM/transboundary natural resource management
TDPs/tradable discharge permits
TRIPs/Trade-Related Intellectual Property Rights
TURFs/Territorial Use Rights in Fishing
TVA/Tennessee Valley Authority

UNCED/United Nations Conference on the Environment and Development
UNCLOS/United Nations Convention on the Law of the Sea
UNCTAD/United Nations Conference on Trade and Development
UNDP/United Nations Development Program
UN/ECE/United Nations Economic Commission for Europe
UNESCAP/United Nations Economic and Social Commission for Asia and the Pacific
UNESCO/United Nations Educational, Scientific, and Cultural Organization
UNFF/United Nations Forum on Forests
UPOV/Union for the Protection of New Varieties of Plants

VMS/Vessel Monitoring System
VOCs/volatile organic compounds

WCPFC/Western and Central Pacific Fisheries Convention
WECAFC/Western Central Atlantic Fishery Commission
WFD/Water Framework Directive
WHO/World Health Organization
WIPO/World Intellectual Property Rights Organization
WSSD/World Summit on Sustainable Development
WTO/World Trade Organization

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