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978-0-521-88328-3 - Multilateral Environmental Agreements: Legal Status of the Secretariats

Bharat H. Desai

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MULTILATERAL ENVIRONMENTAL AGREEMENTS

This book seeks to examine the genesis, development, and proliferation of multi-lateral environmental agreements (MEAs) – built-in lawmaking mechanisms and processes of institutionalization – and their ad hoc treaty-based status and the issue of the legal personality of their secretariats. It provides legal understanding of the location of MEA secretariats within an existing international host institution, as well as discussion of the issues of relationship agreements and interpretation of the commonly used language that triggers such relationships. It places under scrutiny the standard MEA phrase “providing a secretariat,” delegation of authority by the host institution to the head of the convention secretariat, possible conflict areas, host country agreements, and the workings of relationship agreements. The book offers an authoritative account of the growing phenomenon in which an existing international institution provides a servicing base for an MEA that, in turn, triggers a chain of legal implications involving the secretariat, the host institution, and the host country.

Professor Bharat H. Desai holds the prestigious Jawaharlal Nehru Chair in International Environmental Law and is Professor of International Law, as well as Chairman of the Centre for International Legal Studies, at the School of International Studies of Jawaharlal Nehru University in New Delhi. As a Humboldt Fellow, he worked at the University of Bonn on the treatise *Institutionalizing International Environmental Law*. He is the author of *Creeping Institutionalization: Multilateral Environmental Agreements and Human Security*, an associate editor of the *Yearbook of International Environmental Law*, and Vice Chairman of the Foundation for Development of International Law in Asia.

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Preface

This study is an off-shoot of the work (begun in 1998) by the author on the process of “institutionalization” in the field of international environmental law. This book seeks to take a closer view of the multilateral regulatory technique to address sector-specific environmental *problematique*, as well as of the legal status of the secretariats that “service” the institutionalized intergovernmental process. The work was spread over a period of some nine years, during which the author visited various secretariats of multilateral environmental agreements (MEAs) and held discussions with concerned *dramatis personae* in the field, both in person and through written communications.

The initial interest in the crucial aspect of legal status of the secretariats was triggered by interactions with Arnulf Müller-Helmbrecht, then Executive Secretary of the Convention on Migratory Species of Wild Animals (CMS), during my stay in Bonn. I was inspired by Ulf’s sheer passion, knowledge of the field, legal acumen, and firsthand account of the pitched battles he fought to extract “legal due” for the secretariat of the CMS. The resultant insight provided the initial basis for a closer look into the mystical area of the legal status of convention secretariats from my perches at various times in the cities of Bonn, Geneva, and Heidelberg.

I express my gratitude to Alexander von Humboldt Stiftung who generously made possible my stays in Bonn, Geneva, and Heidelberg. I enjoyed the discussion sessions on multilateral institutional issues on the

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environment with Rudolf Dolzer at the Institute of International Law of the University of Bonn. They helped me to have an incisive understanding of the role of various actors, as well as the workings of regime-based institutions. I have had the benefit of staying in Heidelberg to work at the Max-Planck Institute of Public International Law. I thank Rudiger Wolfrum and Armin von Bogdandy for providing me with work facilities.

In the course of writing this book, I had the great pleasure of interacting with several heads and legal officers of convention secretariats, UNEP officials, and officials of other host institutions who generously shared their views and made available relevant documents. They include Barbara Ruis, Calestous Juma, Dan Ogolla, Daniel Navid, Elizabeth Mrema, Francesco Bandarin, Gerardo Gunera-Lazzaroni, Iwona Rummel-Bulska, Janos Pasztor, Jim Armstrong, John Donaldson, Katharina Kummer, Lyle Glowka, Marci Yeater, Martin Krebs, Michael Graber, Richard Kinley, and Robert Hepworth. I greatly appreciate the working space provided to me by the secretariats of the UNFCCC and CMS in Bonn and of the UNITAR at the International Environment House in Geneva.

I greatly appreciate the special gestures of Ralph Zacklin, former Assistant Secretary General of the UN Office of Legal Affairs, and Klaus Töpfer, former UNEP Executive Director – who both took time to send me detailed notes on their respective perspectives on the subject – as well as of Maritta Koch-Weser, former Director-General of the IUCN, who spared time in Gland for discussions on various issues.

In the wake of this book, I have benefited from the insight – through discussions in person or through written communications – and the works and experiences of several scholars and practitioners in the field. These include Alan Boyle, the late Alexander Kiss, Alexander Timoshenko, Bakare Kante, C. F. Amerasinghe, Daniel Navid, David Freestone, Donald Kaniaru, Edith Brown Weiss, Geir Ulfstein, Gerhard Löibl, Günter Handl, Francoise Burhenne, Jan Klabbers, Jose Alvarez, Jutta Brunnee, Nick Robinson, Niels Blokker, Oran Young, Peter Sand, Philippe Sands, Rahmatullah Khan, R. R. Churchill, and Wolfgang Burhenne.

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My scholarly quest in this field has been nurtured by regular interactions with some of my brightest students, who provided a stimulating springboard for classroom discussions and widening horizons through their research works under my supervision.

Last, but not least, I am grateful to John Berger, Senior Editor at Cambridge University Press, who all along has shown immense patience, and who encouraged me to overcome the vicissitudes of life in order to complete this book.

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