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978-1-107-05569-8 - International Environmental Law and the Global South

Edited by Shawkat Alam, Sumudu Atapattu, Carmen G. Gonzalez and

Jona Razzaque

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INTERNATIONAL ENVIRONMENTAL LAW AND THE GLOBAL SOUTH

The unprecedented degradation of the planet's vital ecosystems is among the most pressing issues confronting the international community. Despite the proliferation of legal instruments to combat environmental problems, conflicts between rich and poor nations (the North–South divide) have compromised international environmental law, leading to deadlocks in environmental treaty negotiations and non-compliance with existing agreements. This volume examines both the historical origins of the North–South divide in European colonialism as well as its contemporary manifestations in a range of issues including food justice, energy justice, indigenous rights, trade, investment, extractive industries, human rights, land-grabs, hazardous waste, and climate change. Born out of the recognition that global inequality and profligate consumerism present threats to a sustainable planet, this book makes a unique contribution to international environmental law by emphasizing the priorities and perspectives of the global South.

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included acting as chair of some expert groups on ABS created by the CBD), and was a member of the drafting commissions for the Biodiversity Law of Costa Rica (1998) and of several ABS laws and regulations in different regions. He has published widely on issues of biodiversity, ABS, IP rights, trade, and environment, including the *IUCN Guide to the Nagoya Protocol on ABS* (IUCN, 2012). Jorge has more than twenty-two years' experience in international environmental law.

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978-1-107-05569-8 - International Environmental Law and the Global South

Edited by Shawkat Alam, Sumudu Atapattu, Carmen G. Gonzalez and

Jona Razzaque

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Foreword

It is not commonly realized that the damage presently being done to the environmental rights of future generations is unprecedented in human history.

The environment is being damaged not merely on a global scale but also across all barriers of time, for the damage now being done will last for thousands of years. Indeed, we are damaging it not merely for thousands of years but for thousands of generations, as can be seen when we consider the after-effects of nuclear activity. This is sufficiently established, for the half-life of some products of nuclear activity is around 25,000 years and there is no known method for disposal of the resulting radioactive waste.

Moreover, the environmental damage we are now causing is largely irreversible and will accumulate over years to produce the most disastrous effects. Among these are climate change, which may negate many of the basic assumptions in accordance with which humanity has planned its lifestyle and ordered its affairs from the commencement of civilization.

In contemplating environmental damage of this magnitude, my mind goes back to the arguments heard by the International Court of Justice in the cases relating to nuclear weapons that came before the Court in my time.

In one of them, a lawyer appearing for one of the antinuclear powers argued that if prehistoric men had been able to damage the environment in a manner that affects us today, we would condemn them in the strongest terms as primitive brutes who did not know what they were doing. One fears to think what words could be used by future generations to describe those who have damaged their environment, with full knowledge of what they were doing. And what would future generations think of a legal system that permits this to happen?

It is a sobering thought, in the midst of all this devastation, that concern for future generations was uppermost in the minds of all cultures and civilizations in generations past. Native Americans considered the impact of their decisions for seven generations to come. African cultures thought that any decision should

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take account of past, present, and future as inextricably linked to each other. Native Australians thought of all people as linked by an umbilical cord to Mother Earth, whom it was their duty to protect, because if Mother Earth suffered damage in any way, they would be damaged themselves. All religions likewise made the interests of children one of the foremost considerations of any society, and the trusteeship of the environment a special duty.

In this situation, lawyers, judges, and legislators across the world are under a special duty to prevent this betrayal of our trusteeship duties toward future generations. However, international environmental law has, until recently, been a much neglected branch of international law. That omission is now being remedied, but even today the problems resulting from the North–South divide lack the attention received by other areas of international environmental law.

The appearance of a volume throwing fresh light on these neglected areas is, therefore, to be greatly welcomed. It is a significant step forward in an area of great importance to the human future, and its value is all the greater because it assembles together the vast experience and learning of internationally recognized scholars from both North and South.

The editors of this volume are a group of scholars who are eminently suited to the task. Each of them has a distinguished range of publications, a dedicated record of service to environmentally escalated causes, and membership in various international groups and committees that have dealt with such topics as sustainable development, environmental justice, law and society, environmental education, environmental governance, and human rights relating to the environment.

The contributors likewise are all distinguished scholars who have made significant contributions in various areas of international environmental law. They are drawn from nations across the North–South divide and bring to bear on their studies a depth of philosophical learning that greatly enhances their presentation of the problems involved. They also bring to bear on their work a considerable body of experience from international organizations in which they have served with distinction.

I congratulate the editors and contributors on the work they have produced, which throws much needed light on both the causes of the problems addressed and the avenues toward their solution.

This volume alerts lawyers, legislators, and concerned citizens to the fact that we are slowly but surely moving toward the abyss of environmental destruction – that is, unless we all join actively in the crucial task of addressing the causes of this frontal attack upon the rights of posterity. Time for such remedial action is fast running out, and any step stimulating further action in this direction is most opportune.

A special feature of this volume is that it throws light on such topics as the history of the North–South divide, various relevant international conventions and declarations, climate change, food justice, bioenergy, cultural diversity, extractive

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industries, energy justice, the trade in hazardous wastes, the right to water, green energy, and South–South cooperation. It is a fascinating list, and indeed a treasure trove of environmentally related information.

Thus far, international environmental law has not sufficiently addressed the problem that the global South is at the receiving end of – namely, some of the most devastating environmental damage being caused in our time. It is therefore a welcome addition to the literature of contemporary international environmental law.

The inequality in economic power between the global North and the global South tends, all too often, to result in a violation of some of the basic principles of international law, while preserving the appearance of compliance with them. This volume adds considerably to the contemporary literature of international environmental law.

One is reminded, in this context, of President Eisenhower's celebrated farewell address to the American people, warning them of the growing power of the military-industrial complex, which could intrude into every aspect of their daily life. This warning applies *a fortiori* to the people of the developing world, who do not even have the protections on which citizens of the western world can rely against such encroachment upon their rights. The economic power of corporations is growing by the day, and many of them have revenue far exceeding that of more than 150 of the world's nation states. Worst of all, the military of the global North has used territories of the global South for the testing of nuclear weapons, and the effects of these are painfully felt in the form of disfigurements, excruciating agonies, and birth deformities.

One reality of a world scene dominated by large multinational economic conglomerates is that they operate in countries whose entire national income is much less than theirs. They operate on contractual terms contained in an agreement between them – a contract very often drawn up in circumstances in which the weaker contracting party has to accept the terms dictated to it by the multinational, because it has no other realistic option. Thereafter, the work proceeds on the basis of the contractual arrangement, with the more powerful party relying on the letter of the written contract. The poorer party has no option but to submit, and there is no international tribunal to which it can take any problems of environmental damage that may occur as a result. Consequently, the denigration of its atmosphere, the pollution of its water, damage to its soil, and even radioactivity of its land occur without principles, procedures, or institutions in the field of international law that can prevent this.

Moreover, conglomerates of economic power are constantly indulging in conduct that is damaging to the environment of people of the developing world, most of whom are in no position to prevent this. For example, industrial organizations, pharmaceutical companies, mining operations, chemical factories, and the like have been discharging pollutants into the environment of developing countries for

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some time. They do this by relying on the letter of the contract and ignoring the fact that the poorer contracting parties are unable to resist the terms they offer.

The authors included in this publication have earned the gratitude of the legal profession and the international public by filling an important gap in legal literature and bridging the gap between the theory and practice of international environmental law. They have also brought a futuristic vision into their discussion of the problems addressed. This adds greatly to the value of the publication, which will take its place as one of the important contributions toward making international environmental law more universally applicable and practically effective.

Economic justice between the global North and the global South includes the concept of environmental justice, for the pollution of the environment is a major denial of justice – not only to present generations but also to the future. The Rio Declaration carried this concept very far and this volume carries it further still.

Areas that should receive the attention of international law include the creation of new institutions to handle these matters, adoption of new concepts to give them a firm theoretical foundation and a greater public awareness, and participation in all these matters by the people of the North and the South. All these objectives are promoted by this book, which should make a contribution toward the solution of these problems at all levels – administrative, judicial, academic, educational, economic, and managerial, as well as at the level of public activity. Without activity in all these areas, these problems cannot be solved. This volume is structured to promote activity at every level mentioned.

For all these reasons, publication of this volume at a time when the issues it addresses are coming to the forefront of international affairs can help greatly to illuminate current discussion on this matter. The book contains an abundance of little-known factual material and a refreshing panorama of arguments and viewpoints that will bring home the urgency and importance of the matters under discussion.

The distinguished editors and authors have rendered a significant service to the development of international law in one of its most crucial areas.

Judge Christopher Weeramantry