

Cambridge University Press

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

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

Jona Razzaque

Frontmatter

[More information](#)

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.

SHAWKAT ALAM is an Associate Professor of Law and Director of the Centre for Environmental Law at Macquarie University, Sydney, Australia.

SUMUDU ATAPATTU is Director of Research Centers at the University of Wisconsin Law School and lead counsel for human rights at the Center for International Sustainable Development Law, Montreal, Canada.

CARMEN G. GONZALEZ is a Professor of Law at Seattle University School of Law and has published widely on international environmental law, environmental justice, trade and the environment, and food security

JONA RAZZAQUE is a Professor of Environmental Law at Bristol Law School, University of the West of England, where she specializes in the intersection of human rights and the environment.

Cambridge University Press

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

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

Jona Razzaque

Frontmatter

[More information](#)

Cambridge University Press

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

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

Jona Razzaque

Frontmatter

[More information](#)

International Environmental Law and the Global South

Edited by

SHAWKAT ALAM

Macquarie University Law School

SUMUDU ATAPATTU

University of Wisconsin Law School

CARMEN G. GONZALEZ

Seattle University School of Law

JONA RAZZAQUE

University of the West of England



CAMBRIDGE
UNIVERSITY PRESS

Cambridge University Press

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

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

Jona Razzaque

Frontmatter

[More information](#)

CAMBRIDGE
UNIVERSITY PRESS

32 Avenue of the Americas, New York, NY 10013-2473, USA

Cambridge University Press is part of the University of Cambridge.

It furthers the University's mission by disseminating knowledge in the pursuit of education, learning, and research at the highest international levels of excellence.

www.cambridge.org

Information on this title: www.cambridge.org/9781107055698

© Cambridge University Press 2015

This publication is in copyright. Subject to statutory exception and to the provisions of relevant collective licensing agreements, no reproduction of any part may take place without the written permission of Cambridge University Press.

First published 2015

A catalog record for this publication is available from the British Library.

Library of Congress Cataloging in Publication Data

International environmental law and the Global South / edited by Shawkat Alam, Macquarie University Law School; Sumudu Atapattu, University of Wisconsin Law School; Carmen G. Gonzalez, Seattle University School of Law; Jona Razzaque, University of the West of England, Bristol.

pages cm

Includes index.

ISBN 978-1-107-05569-8 (Hardback)

1. Environmental law—Developing countries. 2. Environmental policy—Developing countries. 3. Environmental law, International. I. Alam, Shawkat, editor. II. Atapattu, Sumudu A., editor. III. Gonzalez, Carmen G., editor. IV. Razzaque, Jona, editor.

K3585.L5775 2016

344.04'6—dc23 2015004867

ISBN 978-1-107-05569-8 Hardback

Cambridge University Press has no responsibility for the persistence or accuracy of URLs for external or third-party Internet Web sites referred to in this publication and does not guarantee that any content on such Web sites is, or will remain, accurate or appropriate.

Cambridge University Press

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

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

Jona Razzaque

Frontmatter

[More information](#)

Contents

<i>Author Biographies</i>	<i>page</i> ix
<i>Acknowledgments</i>	xix
<i>Foreword</i>	xxi
Judge Christopher Weeramantry	
1 The North–South Divide in International Environmental Law: Framing the Issues	1
Sumudu Atapattu and Carmen G. Gonzalez	
PART I HISTORY OF THE NORTH–SOUTH DIVIDE AND GLOBAL ENVIRONMENTAL GOVERNANCE	
2 History of the North–South Divide in International Law: Colonial Discourses, Sovereignty, and Self-Determination	23
M. Rafiqul Islam	
3 Unsustainable Development	50
Ruth Gordon	
4 The Significance of International Environmental Law Principles in Reinforcing or Dismantling the North–South Divide	74
Sumudu Atapattu	
5 The Stockholm Conference and the Creation of the South–North Divide in International Environmental Law and Policy	109
Karin Mickelson	

Cambridge University Press

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

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

Jona Razzaque

Frontmatter

[More information](#)

vi

Contents

- | | | |
|--|---|-----|
| 6 | Global Environmental Governance and the South
Ved P. Nanda | 130 |
| 7 | Quest for International Environmental Institutions:
Transition from CSD to HLPF
Bharat H. Desai and Balraj K. Sidhu | 152 |
| PART II SELECTED INTERNATIONAL ENVIRONMENTAL LAW
EXAMPLES | | |
| 8 | Human Rights, the Environment, and the Global South
Louis J. Kotzé | 171 |
| 9 | Access and Benefit-Sharing: North–South Challenges in
Implementing the Convention on Biological Diversity and
Its Nagoya Protocol
Jorge Cabrera Medaglia | 192 |
| 10 | Emerging Powerful Southern Voices: Role of BASIC
Nations in Shaping Climate Change Mitigation
Commitments
Rowena Maguire and Xiaoyi Jiang | 214 |
| 11 | Sustainable Development in the Era of Bioenergy and
Agricultural Land Grab
Chidi Oguamanam | 237 |
| 12 | Trade in Hazardous Waste
Zada Lipman | 256 |
| 13 | The Right to Water: Constitutional Perspectives from the
Global South
Carlos Bernal | 277 |
| PART III TRADE, INVESTMENT, AND SUSTAINABLE
DEVELOPMENT | | |
| 14 | Trade and the Environment: Perspectives from the
Global South
Shawkat Alam | 297 |
| 15 | From a Divided Heritage to a Common Future?
International Investment Law, Human Rights, and
Sustainable Development
Shyami Puvimanasinghe | 317 |

Cambridge University Press

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

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

Jona Razzaque

Frontmatter

[More information](#)*Contents*

vii

- | | | |
|--|---|-----|
| 16 | Project Finance and Sustainable Development in the Global South
Shalanda H. Baker | 338 |
| 17 | International Environmental Law and Sovereign Wealth Funds
Benjamin J. Richardson | 356 |
| 18 | Transnational Corporations and Extractive Industries
Sara L. Seck | 380 |
| PART IV ENVIRONMENTAL JUSTICE AND VULNERABLE GROUPS | | |
| 19 | Food Justice: An Environmental Justice Critique of the Global Food System
Carmen G. Gonzalez | 401 |
| 20 | A Justice Paradox: Climate Change, Small Island Developing States, and the Absence of International Legal Remedy
Maxine Burkett | 435 |
| 21 | South of South: Examining the International Climate Regime from an Indigenous Perspective
Elizabeth Ann Kronk Warner | 451 |
| 22 | Water Wars: Anti-Privatization Struggles in the Global South
Jackie Dugard and Elisabeth Koek | 469 |
| 23 | Natural Disaster and Climate Change
Paul J. Govind and Robert R. M. Verchick | 491 |
| 24 | International Law, Cultural Diversity, and the Environment: The Case of the General Forestry Law in Colombia
Daniel Bonilla Maldonado | 508 |
| 25 | The Contours of Energy Justice
Lakshman Guruswamy | 529 |
| PART V CHALLENGES AND OPTIONS | | |
| 26 | South–South Cooperation: Foundations for Sustainable Development
Koh Kheng-Lian and Nicholas A. Robinson | 553 |

Cambridge University Press

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

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

Jona Razzaque

Frontmatter

[More information](#)

viii

Contents

27	Public Participation in International Negotiation and Compliance	572
	Lalanath de Silva	
28	Access to Remedies in Environmental Matters and the North–South Divide	588
	Jona Razzaque	
29	Sustainable Development versus Green Economy: The Way Forward?	609
	Shawkat Alam and Jona Razzaque	
	<i>Index</i>	625

Cambridge University Press

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

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

Jona Razzaque

Frontmatter

[More information](#)

Author Biographies

Shawkat Alam is an Associate Professor of Law and Director of the Centre for Environmental Law at Macquarie University, Sydney, Australia, where he teaches and researches in the areas of international law, environmental law, trade, and sustainable development. Shawkat is currently Acting Dean of Macquarie Law School. He has previously been an academic in the Department of Law at Dhaka University, and he also taught at Rajshahi University, Bangladesh. Shawkat holds an LLB (Hons) from Rajshahi University, an LLM from Dhaka University, and a PhD from Macquarie University. He has published scholarly books and articles on international trade, the environment, and sustainable development.

Sumudu Atapattu, LLM, PhD (Cambridge), Attorney-at-Law (Sri Lanka), is Director of Research Centers at the University of Wisconsin Law School, where she teaches seminar courses on international environmental law and climate change, human rights, and the environment. She has published widely; her first book, *Emerging Principles of International Environmental Law*, was published by Transnational Publishers in 2006. Her second book, *Human Rights Approaches to Climate Change*, is forthcoming from Routledge. She is the Lead Counsel for Human Rights at the Centre for International Sustainable Development Law and was an Associate Professor at the University of Colombo Law School from 1995 to 2002.

Shalanda H. Baker teaches courses in international environmental law, renewable energy law, and sustainable development, as well as related courses in energy, business law, and international development, at the University of Hawai'i School of Law. Her research explores large energy and infrastructure project development, indigenous rights, and the effect of development on the environment. Shalanda is the Faculty Advisor to the Environmental Law Program and the founding director of an energy law project at the law school. She received her JD from Northeastern

Cambridge University Press

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

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

Jona Razzaque

Frontmatter

[More information](#)

University School of Law and her LLM from the University of Wisconsin Law School while completing a William H. Hastie Fellowship.

Carlos Bernal is an Associate Professor at Macquarie Law School, Sydney, Australia. He holds an LLB, an MA, an SJD, and a PhD (in philosophy). He teaches and researches in the fields of constitutional comparative law, jurisprudence, and torts. His scholarship, published in various languages, undertakes a critical analysis of the adjudication of human and constitutional rights in Latin America. He has also investigated and appraised the active role of current constitutional courts of that part of the world in conducting judicial review of legislation, constitutional amendments, administrative action, and actions and omissions by private stakeholders.

Daniel Bonilla Maldonado is Associate Professor of Law and Director of the Public Interest Law Group at the Universidad de los Andes in Bogota, Colombia. He holds a PhD and an LLM from Yale Law School and a law degree from Universidad de los Andes. He has been a visiting professor or lecturer at a number of institutions, including Yale Law School, Fordham Law School, Oñati International Institute for the Sociology of Law, University of Texas School of Law, Georgia State University College of Law, University of Puerto Rico, and Universidad Nacional de Colombia.

Maxine Burkett is an Associate Professor of Law at the University of Hawai'i. An expert in the law and policy of climate change, she has presented research on diverse areas of climate law throughout the United States and in West Africa, Asia, Europe, and the Caribbean. From 2009 to 2012 Maxine also served as the inaugural Director of the Center for Island Climate Adaptation and Policy. She attended Williams College and Exeter College, Oxford University, and received her law degree from Boalt Hall School of Law at the University of California, Berkeley. In 2010, Maxine served as the youngest recipient of the Wayne Morse Chair of Law and Politics at the Wayne Morse Center, University of Oregon.

Jorge Cabrera Medaglia is an internationally recognized expert in biodiversity and biosafety law. He holds a JD and postgraduate and LLM degrees in environmental, agricultural, and trade law. He is currently a Professor of Environmental Law at the University of Costa Rica, a legal advisor to the National Biodiversity Institute of Costa Rica, and Lead Counsel for the Biodiversity Program at the Centre for International Sustainable Development Law based in Montreal, Canada. Jorge is also a member of the Access and Benefit-Sharing (ABS) Expert Group established by the FAO Commission on Genetic Resources to advise the Commission working groups on ABS issues (2013–2015), was a negotiator of the Convention on Biological Diversity (CBD) and the *Nagoya Protocol* for the government of Costa Rica (which

Cambridge University Press

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

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

Jona Razzaque

Frontmatter

[More information](#)*Author Biographies*

xi

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.

Bharat H. Desai holds the prestigious Jawaharlal Nehru Chair in International Environmental Law as well as being a Professor of International Law and Chairman of the Centre for International Legal Studies in the School of International Studies at Jawaharlal Nehru University in New Delhi. He serves as an associate editor of the *Yearbook of International Environmental Law* (Oxford), a governing board member of the International Union for the Conservation of Nature Academy of Environmental Law (Ottawa), and Chairman of the Centre for Advanced Study on Courts and Tribunals (Amritsar).

Jackie Dugard, BA (Hons), LLB (Wits), MPhil and PhD (Cambridge), LLM (Essex), is an Associate Professor at the School of Law, University of the Witwatersrand, where she teaches property law. She is a cofounder and former executive director of the Socio-Economic Rights Institute of South Africa, where she is an honorary senior researcher. With a background in social sciences and law, Jackie is a human rights activist and scholar and has published widely on the role of law and courts in effecting social change, as well as on socio-economic rights, access to courts, protest, and social movements.

Carmen G. Gonzalez is a Professor of Law at Seattle University School of Law and writes in the areas of international environmental law, environmental justice, trade and the environment, and food security. She has been a Fulbright Scholar in Argentina, a Fellow at the US Supreme Court, a visiting professor at the Hopkins-Nanjing Center in China, and a visiting Fellow at the Lauterpacht Centre for International Law at Cambridge University in the United Kingdom. She has also worked on USAID-funded environmental law capacity-building projects in Latin America and in the former Soviet Union. Carmen currently serves as cochair of the Research Committee of the International Union for the Conservation of Nature Academy of Environmental Law. She holds a BA in political science from Yale University and a JD from Harvard Law School.

Ruth Gordon has taught at Villanova University School of Law since 1990. She is a graduate of New York University School of Law as well as the London School of Economics and Political Science. Her scholarly work generally focuses on the global South and its encounters with myriad facets of international law, including the environment, the impact of race and racism, the global economy, colonialism,

Cambridge University Press

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

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

Jona Razzaque

Frontmatter

[More information](#)

and development. She taught the law of contracts between 1990 and 2008 and now teaches in the areas of international business transactions, international trade and investment, and public international law, as well as teaching a seminar on international environmental law.

Paul J. Govind is currently a lecturer in environmental law and policy at the Centre for Environmental Law, Macquarie University, Australia, where he is also Program Director for Environmental Law Studies. He is editor of the *Australian Journal of Environmental Law*, and his research interests include climate change adaptation law and policy, climate change and disaster risk reduction, and climate finance and its relationship to development. Paul is currently completing his PhD at Australian National University, exploring the role of the right to development in the context of climate change adaptation funding and resilience. His recent publications have examined the relationship between funding channels for climate change adaptation and disaster risk reduction, the relationship between climate change adaptation and disaster risk reduction in the context of global North–South relations, and the importance of social vulnerability in the allocation of climate finance.

Lakshman Guruswamy, the Nicholas Doman Professor of International Environmental Law at the University of Colorado at Boulder, was born in Sri Lanka and is a recognized expert in international environmental and energy law. Lakshman teaches courses on international environmental law, energy justice, and oil and international relations. He is also the Director of International Energy Programs at the Getches Wilkinson Center of the University of Colorado. He has authored books traversing crucial aspects of international environmental and energy law and has published widely on the subjects of international energy and environmental law in legal and scientific journals.

M. Rafiqul Islam is a Professor of Law at Macquarie University. He obtained his PhD and LL.M. from Monash University and his MA in Economics, BA (Hons), and LLB (first class) from the University of Rajshahi. His teaching and research interests are in the area of public international law. He has published extensively on international law, international trade law, human rights, and the constitutional law of Bangladesh. He was awarded the Macquarie University Outstanding Teacher Award 2000 for his excellence in teaching and in higher degree research supervision. His recent books include *An Introduction to International Refugee Law* (2013) and *International Law: Current Concepts and Future Directions* (2014).

Xiaoyi Jiang is currently an Associate Professor of Environmental Law at the Wuhan University China Institute of Boundary and Ocean Studies (CIBOS), China. She holds a PhD from the University of Western Sydney, Australia, on the

Cambridge University Press

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

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

Jona Razzaque

Frontmatter

[More information](#)

topic of legal issues for implementing the Clean Development Mechanism. Her scholarship focuses on international, comparative, and national environmental law and policy, and her research and publications emphasize climate change issues. Since joining the CIBOS, which is supported by the Ministry of Foreign Affairs of the People's Republic of China, in 2010, she has also worked on maritime environment issues.

Koh Kheng-Lian is Emeritus Professor of the Law Faculty, National University of Singapore. She was a founding member and former Director of the Asia-Pacific Centre for Environmental Law from 1996 to 2013 and is now its Honorary Director. She was the IUCN CEL Regional Vice Chair for South and East Asia, and a member of its Steering Committee, from 1996 to 2004. The author of many publications and conference papers in environmental law, including *ASEAN Environmental Law, Policy and Governance: Selected Documents* (two volumes, 2009 and 2012), she has also published books and articles on criminal law, commercial transactions, and straits in international navigation. She is the 2012 recipient of the Elizabeth Haub Prize in Environmental Law and an honoree in the Singapore Women's Hall of Fame 2014.

Elisabeth Koek is a PhD candidate at the Irish Centre for Human Rights, NUI Galway, and is currently based in Gaza City, where she works for the Norwegian Refugee Council. Previously, Elisabeth worked in Monrovia for the UN peace-keeping mission in Ramallah for Palestinian human rights organization Al-Haq, in Johannesburg on socio-economic rights issues, and in Amsterdam and New York in corporate law. Elisabeth holds an LLM in public international law from King's College London and an LLM in corporate law from the University of Leiden Law School in the Netherlands.

Louis J. Kotzé is Research Professor at the Faculty of Law, North-West University, South Africa (Potchefstroom Campus). He previously served as Professor of Environmental Law at that institution. He is also Visiting Professor of Environmental Law at University of Lincoln, United Kingdom, and the author, coauthor, or coeditor of various publications related to South African, regional, and global environmental law. His research focuses on environmental constitutionalism, on human rights and the environment, and on global environmental governance. His latest books include *Global Environmental Governance: Law and Regulation for the 21st Century* (Edward Elgar, 2012) and *Transboundary Governance of Biodiversity* (with Thilo Marauhn; Brill Nijhoff, 2014). He is a co-editor of the *Journal of Human Rights and the Environment* and assistant editor of *Transnational Environmental Law*. Louis is an Alexander von Humboldt Foundation Fellow, Deputy Director of the Global Network for Human Rights and the Environment, and a National Research Foundation-rated researcher.

Cambridge University Press

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

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

Jona Razzaque

Frontmatter

[More information](#)

xiv

Author Biographies

Elizabeth Ann Kronk Warner currently serves as an Associate Professor and Director of the Tribal Law and Government Center at the University of Kansas School of Law. She also serves as an acting Chief Judge of the Sault Ste. Marie Tribe of Chippewa Indians Court of Appeals. She has written extensively in the field of climate change and its impacts on indigenous peoples, including several law review articles and a chapter in the book *Climate Change and Indigenous Peoples: The Search for Legal Remedies*, which she also co-edited. She is a tribal citizen of the Sault Ste. Marie Tribe of Chippewa Indians.

Zada Lipman is an Emeritus Professor of Law at Macquarie University. She has co-authored five books, the most recent being *Environmental and Planning Law in New South Wales* (with Lyster, Franklin, Pearson, and Wiffen; 3rd edn, Federation Press, 2012). Her recent publications include “Pollution Control and the Regulation of Chemicals and E-Waste,” in *Routledge Handbook of International Environmental Law* (eds Alam, Bhuiyan, Chowdhury, and Techera; Routledge, 2012), and “Compliance and Enforcement of International Conventions in Australia,” in *Compliance and Enforcement in Environmental Law* (eds Paddock, Qun, Kotze, Markell, Markowitz, and Zaelke; Edward Elgar, 2011).

Rowena Maguire is a senior lecturer and co-chair of the International Law and Global Governance Research Program within the Faculty of Law at the Queensland University of Technology, Australia. Her doctoral research focused on the international regulation of sustainable forest management and was published by Edward Elgar in 2013 as *Global Forest Governance*. Her research work post-PhD completion has centered on the international climate regime, with a focus on issues of equity within the regime, and she is currently part of a research team working on a funded Australian Research Council project examining integrity issues within the UNFCCC.

Karin Mickelson is an Associate Professor at the University of British Columbia, Faculty of Law. Her research has focused on the South–North dimension of international law, with a particular focus on international environmental law. She has been involved in Third World Approaches to International Law since the late 1990s.

Ved P. Nanda is John Evans University Professor at the University of Denver and Thompson G. Marsh Professor of Law and Director of the Nanda Center for International and Comparative Law at the University of Denver, Sturm College of Law. From 1994 to 2008, he also served as Vice Provost for Internationalization at the university. Former students and friends of Ved established the Nanda Center and the Ved Nanda Professorship in International Law at the College of Law.

Cambridge University Press

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

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

Jona Razzaque

Frontmatter

[More information](#)

Author Biographies

xv

He has authored or co-authored more than two dozen books on international law and policy, and he has written more than 200 book chapters and law review articles.

Chidi Oguamanam is a full Professor in the Faculty of Law at the University of Ottawa. He is called to the Bar in Nigeria and Canada and is affiliated with the Centre for Law, Technology and Society and the Centre for Environmental Law and Global Sustainability at the University of Ottawa. Chidi was formerly Director of the Law and Technology Institute at the Schulich School of Law, Dalhousie University; his publications include *International Law and Indigenous Knowledge* (University of Toronto, 2010), *Intellectual Property in Global Governance* (Routledge, 2012), and *Innovation and Intellectual Property: Collaborative Dynamics in Africa* (co-editor; University of Cape Town, 2014).

Shyami Puvimanasinghe is a Human Rights Officer at the Office of the High Commissioner for Human Rights, Geneva, Switzerland. She previously served as a senior lecturer at the University of Colombo, Sri Lanka, and worked in the non-governmental sector in Botswana. Her publications on sustainable development include *Foreign Investment, Human Rights and the Environment* (Brill, 2007). A graduate of the University of Colombo and Attorney-at-Law of the Supreme Court of Sri Lanka, she holds an LLM from Harvard Law School and a PhD in development studies from the Institute of Social Studies, The Hague, the Netherlands.

Jona Razzaque, Professor of Environmental Law at Bristol Law School, University of the West of England (UWE), is a barrister and holds a PhD in law from the University of London. Prior to joining the UWE, she worked as a staff lawyer with the Foundation for International Environmental Law and Development and previously taught at the School of Oriental and African Studies, University College London, and Queen Mary University of London. She is a member of the editorial board of the *Journal of Environmental Law* and serves as a member of the IUCN World Commission on Environmental Law. She has researched widely on access to justice and participatory rights in environmental matters.

Benjamin J. Richardson is a Professor at the University of Tasmania's Faculty of Law and the Institute for Marine and Antarctic Studies. He previously worked abroad for more than eighteen years, in law faculties in New Zealand, Canada, and the United Kingdom. His last such position was at the University of British Columbia, where he held the Canada Research Chair in Environmental Law and Sustainability and was Director of its Centre for Law and Environment. Benjamin's teaching and scholarship are diverse, including climate change law, socially responsible investment, corporate social responsibility, and Aboriginal legal issues.

Cambridge University Press

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

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

Jona Razzaque

Frontmatter

[More information](#)

xvi

Author Biographies

Nicholas A. Robinson is the University Professor for the Environment at Pace University, Gilbert and Sarah Kerlin Distinguished Professor of Environmental Law Emeritus at Pace University School of Law, and Adjunct Professor at the Yale University School of Forestry and Environmental Studies. He is also the co-director of the Pace Global Center for Environmental Legal Studies. He founded Pace's environmental law programs, edited the proceedings of the 1992 United Nations Earth Summit in Rio de Janeiro, Brazil, and is the author of several books and numerous articles. He teaches a number of environmental law courses and is former Chair of the Commission on Environmental Law and Legal Advisor to the International Union for the Conservation of Nature and Natural Resources.

Sara L. Seck (LLB, Toronto; PhD, Osgoode Hall) is an Associate Professor at the Faculty of Law at Western University, Ontario, Canada, which she joined in July 2007. Her research explores corporate social responsibility, international sustainable mineral development law, international human rights and environmental law, climate change, and indigenous law, as well as international and transnational legal theory. Theoretically, she is interested in the relationship between TWAIL and international legal process theories informed by constructivist understandings of international relations. Sara has published widely, including in the *Yale Human Rights and Development Law Journal* and the *Canadian Yearbook of International Law*.

Balraj K. Sidhu holds a PhD in international law from Jawaharlal Nehru University, New Delhi. Balraj is Executive Director of the Centre for Advanced Study on Courts and Tribunals, Amritsar, which is dedicated to the study of the role and function of courts and tribunals in global governance; international justice; rule of law; and the promotion of transjudicial dialogue between international courts and national courts. Balraj has contributed extensively to research papers in journals of international repute on issues concerning arbitration, international environmental dispute settlement, green courts and tribunals, transboundary water resources governance, polar regions, natural resource management, and conservation issues.

Lalanath de Silva is the Director of the Environmental Democracy Practice at the World Resources Institute and has more than thirty years of experience in the fields of environmental law, human rights, and international law. He was a public interest lawyer for more than two decades, co-founding two leading NGOs in Sri Lanka. He worked as a legal consultant to Sri Lanka's Ministry of Environment and as a legal officer in the Environmental Claims Unit of the UN Compensation Commission. He has a PhD from the University of Sydney and an LLM from the University of Washington, Seattle, and he graduated from Sri Lanka Law College with honors.

Cambridge University Press

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

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

Jona Razzaque

Frontmatter

[More information](#)

Author Biographies

xvii

Robert R. M. Verchick holds the Gauthier–St. Martin Chair in Environmental Law at Loyola University New Orleans. He is also Senior Fellow in Disaster Resilience Leadership at Tulane University. As an official at the US Environmental Protection Agency (EPA) in 2009 and 2010, Robert helped develop climate adaptation policy for the EPA and served on President Barack Obama’s Interagency Climate Change Adaptation Task Force. He holds a JD degree from Harvard University and an AB degree from Stanford University.

Christopher Weeramantry is a former vice-president of the International Court of Justice, a former judge of the Supreme Court of Sri Lanka, Professor of Law Emeritus at Monash University, Australia, and a counsellor of the World Future Council. A prolific writer, he has published many books and articles on a wide range of issues. He won the UNESCO Prize for Peace Education in 2006, the Right Livelihood Award in 2007, and the Lifetime Achievement Award of the Lawyers Committee on Nuclear Policy in 2008. He established the Weeramantry International Centre for Peace Education and Research in Sri Lanka in 2001.

Cambridge University Press

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

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

Jona Razzaque

Frontmatter

[More information](#)

Cambridge University Press

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

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

Jona Razzaque

Frontmatter

[More information](#)

Acknowledgments

This project would not have been possible without the collaboration of many people. We would like to thank all our contributors, who produced their chapters amid many demands on their time. They were very gracious about the editorial comments and suggestions and worked with us to ensure that the central theme of the book was highlighted in their chapters.

We owe a particular debt of gratitude to Dilara Reznikas, who worked tirelessly to ensure that all the chapters were formatted properly and were ready by the deadline. Without her, we would have been lost. Her dedication and attention to detail, as well as her editorial skills, were invaluable.

We are most grateful to Professor Benjamin J. Richardson and Judge Christopher Weeramantry for their support with this challenging project. We would also like to acknowledge the support of Cambridge University Press, especially John Berger, in publishing this manuscript.

Finally, we would all like to thank our families. This work would not have been possible without their continuing patience and ongoing support.

Cambridge University Press

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

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

Jona Razzaque

Frontmatter

[More information](#)

Cambridge University Press

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

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

Jona Razzaque

Frontmatter

[More information](#)

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

Cambridge University Press

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

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

Jona Razzaque

Frontmatter

[More information](#)

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

Cambridge University Press

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

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

Jona Razzaque

Frontmatter

[More information](#)

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

Cambridge University Press

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

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

Jona Razzaque

Frontmatter

[More information](#)

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