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International Environmental Law and the Global South Edited by Shawket Alam, Sumudu Atapattu, Carmen G. Gonzalez, and Jona Razzaque

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immigration, then the ILO will need to better use its comparative advantage of having worker and employer organizations as full participants in the ILO Governing Body and in ILO committees. Throughout the book, Maupain points to ways to improve ILO monitoring and peer-review mechanisms. Peer review is an important feature in many other regimes, such as the WTO and some multilateral environmental agreements, but none of those other regimes is as progressive as the ILO in providing an equal role for nonstate actors as for government officials. For example, in the WTO, the Trade Policy Review Mechanism subjects a government's trade policy to periodic review by the WTO Secretariat and other governments, but, in contrast to the ILO, the economic actors in the market, like exporters and importers, are not invited into the room when the review happens.

The advent of the ILO's one-hundredth anniversary, Maupain says, provides "an exceptional opportunity for the ILO to achieve a more imaginative deployment of its persuasion capacities" (p. 245). With its "ingenious constitutional framework, [the ILO] . . . has the capacity to reinvent itself from the inside to meet the expectations of its founders and become a more effective social regulator of the global economy" (p. 243). Pointing to the ILO's unique status in being a public international organization in which the chief executive is chosen not only by governments but also by workers and employers, Maupain argues that the ILO's director-general—currently Guy Ryder from the United Kingdom—is best positioned to initiate change. I agree with that suggestion and note that there is still time before 2019 to launch a consensus-building process with broad participation. A centennial is a terrible thing to waste. Yet the path of least resistance will be to celebrate the ILO's achievements and leave institutional reform to another day. For policymakers who would take advantage of the centennial moment, Maupain's book offers a fine roadmap for upgrading the ILO's effectiveness in pursuit of social justice.

STEVE CHARNOVITZ
George Washington University

International Environmental Law and the Global South. Edited by Shawkat Alam, Sumudu Atapattu, Carmen G. Gonzalez, and Jona Razzaque. Cambridge, New York: Cambridge University Press, 2015. Pp. xxiv, 631. Index. \$155.

Is international environmental law (IEL) even considered "law"?¹ This question has beset the field since the early 1970s when momentum started to build for international mechanisms for environmental protection.² Without the traditional legislative, executive, or judicial bodies and in light of its seemingly broad principles, IEL has lacked the accepted characteristics of what constituted law.³ Courts in the United States have indicated that "references to the Stockholm Principles or to the principles of international environmental law (the Polluter Pays Principle, the Precautionary Principle, and the Proximity Principle) did not set forth specific proscriptions or enjoy consensus among the international community."⁴ These courts have rejected the expansive notion of a general environmental law of nations, described as "a law of nations based on a vague international sense of responsibility toward the environment."⁵ At the intersection between what constitutes IEL and how IEL can create effective legal mechanisms for environmental justice in the global South is the book's entry into the academic discussion.

Incidentally, this collection is not merely a book; much more, it represents a movement stemming from Third World Approaches to International Law (TWAAIL), which has operated on the

¹ Carl Bruch, *Is International Environmental Law Really "Law"? An Analysis of Application in Domestic Courts*, 23 PACE ENVTL. L. REV. 423 (2006); Anthony D'Amato, *Is International Law Really "Law"?*, 79 NW. U. L. REV. 1293 (1985).

² See Stockholm Declaration on the Human Environment, June 16, 1972, UN Doc. A/CONF.48/14 & Corr. 1 (1972), 11 ILM 1416 (1972) [hereinafter Stockholm Declaration].

³ Bruch, *supra* note 1, at 424.

⁴ Raechel Anglin, *International Environmental Law Gets Its Sea Legs: Hazardous Waste Dumping Claims Under the ATCA*, 26 YALE L. & POL'Y REV. 231, 237 (2007) (footnote omitted); see also *Amlon Metals, Inc. v. FMC Corp.*, 775 F.Supp. 668, 671 (S.D.N.Y. 1991).

⁵ Anglin, *supra* note 4, at 237.

margins of international law. Likewise, IEL finds itself at the boundaries of international law but is gaining a new tide of support in its bid for legitimacy, equality, and human dignity. *International Environmental Law and the Global South* understands and recognizes these pressures, and it sheds new light on this often undervalued area of international law.

This compendium brilliantly weaves IEL norms and their influence on the global South. The term *global South* stems from the post-World War II modernization efforts and revolutionary moments in areas in the southern hemisphere that struggled to obtain economic and political ambitions of either capitalist or socialist modernity.⁶ The realization of the demands placed on nation-states and populations in the global South was largely uncharted in the domain of IEL. This book expands rote IEL notions to transform the topic into a more fluid discipline to provide a more robust platform for protecting some of the world's most ecologically sensitive environments and most-vulnerable people. Overall, the book departs from predominant formulations of international law, offering a frank and pragmatic assessment of the concerns of IEL thus far. The volume addresses "concessions that the South has been successful in winning from the North, such as transfer of technology and establishing international funds to help the Southern countries fulfill their international obligations" (p. 5). At the same time, the book actualizes that "these ostensibly positive developments may create additional opportunities for the North to control the South by withholding funds or placing conditions on their use" (*id.*).

The book is organized into five distinct sections. Following an introductory chapter, Part I (chapters 2–7) analyzes the origins and history of the North-South divide and global environmental governance. Part II (chapters 8–13) provides examples of IEL, expounding upon the nexus between human rights, the environment, and the global South; and the sustainable development concept and the land-grabbing phenomenon. Part III (chapters 14–18) considers trade, investment, and sustainable development with respect to inter-

national investment law, project finance, sovereign wealth funds, and transnational corporations and extractive industries. Part IV (chapters 19–25) encapsulates issues of environmental justice and vulnerable groups in the context of food justice, climate change and small island developing states, water wars, natural disasters, cultural diversity, and energy justice. Finally, in Part V (chapters 26–29), the volume turns toward challenges and options, including South-South cooperation, public participation in international negotiation, access to remedies and the North-South divide, and sustainable development versus a green economy.

While other works have laid the foundation for the scope and context of IEL,⁷ *International Environmental Law and the Global South* delves further into the root causes and concerns of poverty in the context of both public and private international law, labor disputes, international negotiations, and trade law, along with inherent ideological inequities of legal discourse. This volume follows in the vein of much-needed critical contributions to international law such as Balakrishnan Rajagopal's *International Law from Below: Development, Social Movements, and Third World Resistance* (2003); Antony Anghie's *Imperialism, Sovereignty and the Making of International Law* (2007); Sundhya Pahuja's *Decolonising International Law: Development, Economic Growth and the Politics of Universality* (2011); and José-Manuel Barreto's *Human Rights from a Third World Perspective: Critique, History and International Law* (2013).

International Environmental Law and the Global South seeks to be both an academic companion to existing texts and a handbook for lawyers, practitioners, policymakers, political leaders, and environmental and social justice activists, and it demonstrates the expertise and knowledge base of its editors. Shawkat Alam is the director of the

⁶ Arif Dirlik, *Global South: Predicament and Promise*, 1 GLOBAL SOUTH 12, 12–13 (2007), available at <http://www.jstor.org/stable/40339225>.

⁷ See, e.g., DAVID HUNTER, JAMES SALZMAN & DURWOOD ZELKE, INTERNATIONAL ENVIRONMENTAL LAW AND POLICY (2011); RESEARCH HANDBOOK ON INTERNATIONAL ENVIRONMENTAL LAW (Maglosia Fitzmaurice, David M. Ong & Panos Merkouris eds., 2010); EDITH BROWN WEISS, STEPHEN C. MCCAFFREY, DANIEL BARSTOW MAGRAW & A. DAN TARLOCK, INTERNATIONAL ENVIRONMENTAL LAW AND POLICY (2d ed. 2007).

Centre for Environmental Law at Macquarie Law School in Sydney, Australia, who has authored numerous books and articles on international law, IEL, international trade, and sustainable development. Sumudu Atapattu is the director of Research Centers and a senior lecturer at the University of Wisconsin Law School and has many publications in the fields of IEL, environmental rights, and international sustainable development law. Carmen Gonzalez is a professor at Seattle University School of Law and has published widely in the areas of IEL, environmental justice, trade and the environment, and food security. Jona Razzaque is a professor of environmental law at the University of the West of England, who has extensive research in access to justice and participatory rights in environmental matters.

The volume delineates the ways in which our global economic system causes not only poverty but also environmental destruction. On the North-South divide in IEL, Atapattu and Gonzalez note that “the persistence of extreme poverty in the global South is attributable not to random misfortune, but to a global economic order that systematically benefits the wealthy and disenfranchises the poor” (p. 9). The forces that spurred extreme poverty were not happenstance but were rather directly proportional to the exploitation of property interests, natural resources, and human capital from the global South. Until now, IEL “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” (p. xxiii).

Speaking more broadly to international law, the editors have reawakened the sentiment from the 1955 Bandung Conference of Asian and African states⁸ and harvested momentum from the United Nations Conference on Sustainable Development (Rio+20) in 2012.⁹ These calls for environmental justice from the global South infused the negotiations leading up to the 2015 Paris climate agree-

ment.¹⁰ Meanwhile, the enduring divide between the developing and developed world continues to fester. This book unravels those profound economic, social, environmental, and political tensions, and it strives to mitigate them.

In chapter 3, “Unsustainable Development,” Ruth Gordon examines environmentalism’s emergence in the global North. The origins of U.S. environmentalism “can be traced to Henry David Thoreau’s 1854 classic, *Walden*, which lamented human destruction of the environment in the name of capitalist expansion” (p. 57). The modern environmental movement began with the 1962 publication of Rachel Carson’s *Silent Spring*, which documented pesticide damage to biodiversity and human life. The modern international environmental movement then sprang from the United Nations Conference on the Human Environment in Stockholm, Sweden, in 1972.¹¹ In 1983, the UN General Assembly appointed the World Commission on Environment and Development (WCED). Gordon notes that WCED’s endeavors were more attuned to the interests of the global North, with an emphasis on energy, pollution, the global economy, and manufacturing. She stresses that “the concept of sustainable development was conceived in large part to engage the global South in ecological discourse, not to fundamentally question global North understandings of development and economic growth and their bearing on the environment” (p. 62). Poverty’s environmental impact and the idea that development would eliminate that poverty made economic growth paramount. Instead of “critically interrogating the dominant paradigms of trade and production,” WCED “called for a new era of economic growth that was both socially and environmentally sustainable, meaning global South growth had to also restrain the myriad environmental problems that seemed to be looming for future generations” (*id.* (footnotes omitted)).¹²

¹⁰ At <http://www.cop21paris.org>.

¹¹ See Stockholm Declaration, *supra* note 2.

¹² WORLD COMMISSION ON ENVIRONMENT AND DEVELOPMENT, OUR COMMON FUTURE 168–89, 206–32 (1987); GILBERT RIST, THE HISTORY OF DEVELOPMENT: FROM WESTERN ORIGINS TO GLOBAL FAITH 180 (3d ed. 2008); see also Douglas E.

⁸ See CVCE, The Bandung Conference [of April 24, 1955] (Sept. 21, 2015), at http://www.cvce.eu/obj/the-bandung_conference-en-3da59f16-567b-4b2d-8060-4c2482e56dd9.html.

⁹ At <http://www.uncsd2012.org>.

This understanding formed the basis of sustainable development.

Unfortunately, leaders have not accounted for all of the ways in which poverty shuts locals out of the decision-making processes, and thus solutions are not tailored to local needs and circumstances. In chapter 4, "The Significance of International Environmental Law Principles in Reinforcing or Dismantling the North-South Divide," Atapattu emphasizes that sustainable development entails both substantive and procedural components. "The procedural components—access to information, right to participate in the decision-making process, and access to remedies—are part of international human rights law" (p. 107). A disconnect has existed between rights to empower communities and to improve the democratic processes and their actual implementation. Illiteracy and lack of access to information have further disadvantaged those communities. Poverty and daily challenges have inhibited the ability to engage actively in community building and capacity-building activities. "While in many countries environmental impact assessment processes provide for public participation, poor people often cannot or do not participate due to lack of access, lack of education, or language issues" (*id.*). These communities do not have access to experts to parse through technical reports and lawyers to represent the communities when rights are violated. For example, wind energy projects in Oaxaca, Mexico, are being conducted without the public participation of affected community members, including indigenous groups.

In chapter 6, "Global Environmental Governance and the South," Ved Nanda explains that developing countries must integrate their environmental sustainability priorities into development and economic policies. He points out that developing countries require "assistance to enable them to comply with, implement, and monitor their internationally agreed commitments, along with their own national priorities" (p. 151). These aspi-

ration goals necessitate adequate financing, human resources, technical and policy expertise, and institutional capacity. Consequently, to provide such assistance, the United Nations Environmental Programme (UNEP) must expand its regional operations and work more closely with the United Nations Development Programme (UNDP) and UN country teams.

Rowena Maguire and Xiaoyi Jiang analyze international instruments for change in chapter 10, "Emerging Powerful Southern Voices: Role of BASIC Nations in Shaping Climate Change Mitigation Commitments." Climate-change adaptation efforts have caused considerable North-North tensions. "The European Union (EU) is advocating for a new climate instrument to be negotiated at the international level (a top-down approach) while other Northern nations, such as the United States and Japan, favor targets to be set at the domestic level according to national priorities (a bottom-up approach)" (p. 215 (footnotes omitted)). On the one hand, the European Union wants to enhance climate commitments "by requiring inclusion of the following five principles: transparency, quantifiability, comparability, verifiability, and ambition" (*id.*). On the other hand, the United States is pursuing "full flexibility for parties based on national circumstances and capabilities" (*id.*).

In light of the recent Paris climate agreement, these North-North, North-South, and South-South tensions will continue. Realizing these geographic fissures and accounting for the economic, ecological, and sociopolitical differences between the developed and the developing world are further key contributions of this book to the field of IEL, and international law more broadly. The Paris climate agreement has primarily served to benefit the transnational economic interests that seek to expand green technologies, renewables, and other sustainability projects. Ultimately, the financial incentives are crucial drivers of the "green growth" movement.

In Parts III and IV, the book is most effective because it upends global environmental legal norms and brings the global South's voices and concerns to the fore in a novel way. While the range of authors, expertise, and topics is wide in

Fisher, *Freshwater, Habitats and Ecosystems*, in ROUTLEDGE HANDBOOK OF INTERNATIONAL ENVIRONMENTAL LAW 227 (Shawkat Alam, Jahid Hossain Bhuiyan, Tareq M. R. Chowdhury & Erika J. Techera eds., 2013).

breadth, the volume also has considerable detail and scope. IEL has, as its ambitious goal, the securing of a tranquil and harmonious future for the globe. With the Paris climate agreement under scrutiny, these underrepresented global South voices as exhibited in the book are quite valuable in analyzing the efficacy of climate-change adaptation measures and environmental legal mechanisms at the subnational, national, and international levels.

The book's second half dissects international economic law, including the trade regime, investment law, project finance, sovereign wealth funds, and transnational corporations engaged in extractive industries. These chapters also provide a wide-ranging representation of the environmental challenges facing vulnerable and downtrodden populations, particularly the interface between economic law and environmental and human rights obligations. In chapter 17, "International Environmental Law and Sovereign Wealth Funds," Benjamin Richardson examines the public impacts of sovereign wealth funds in the lightly regulated global economy that caters to multinational corporations, investors, and other private-sector entrepreneurs. Richardson determines that the application of IEL to sovereign wealth funds is important to ensure that such investments support environmentally prudent activities. He provides examples of socially responsible investing by the Norwegian Government Pension Fund—Global (NGPF-G) and the New Zealand Superannuation Fund (NZSF).

Part IV expands on environmental externalities caused by carbon consumption and the human ecological footprint. In chapter 19, "Food Justice: An Environmental Justice Critique of the Global Food System," Carmen Gonzalez states that "[a]chieving food justice requires careful attention to North-South power imbalances that determine where, how, and by whom food is grown and consumed" (p. 405). She adds: "Environmental justice is a useful framework for analyzing North-South power asymmetries and for developing legal strategies to promote a more equitable and sustainable global economic order" (*id.*). In chapter 20, "A Justice Paradox: Climate Change, Small Island Developing States, and the Absence of International Legal Remedy," Maxine Burkett

advocates public interest climate litigation as a viable legal and political option for small island developing states. She argues that "litigation provides a unique opportunity for plaintiffs to pool the benefits and risks of such bold action, therefore providing a pathway for vulnerable nations to seek redress despite the risk of retaliation" (p. 450). In a similar vein, in chapter 21, "South of South: Examining the International Climate Regime from an Indigenous Perspective," Elizabeth Ann Kronk Warner analyzes the variability of differences between indigenous communities and other communities in the global South. She asserts that indigenous communities "are particularly vulnerable to the impacts of climate change and therefore deserve special consideration and accommodation within the international legal regime, particularly within the climate change regime" (p. 467).

Part V considers resulting challenges and options. Koh Kheng-Lian and Nicholas Robinson, in chapter 26, "South-South Cooperation: Foundations for Sustainable Development," pinpoint that the overarching question for South-South cooperation is the issue of human rights and their observance. The authors show that due to the rapid exploitation of natural resources in places where the rule of law is weak, South-South cooperation can be undermined. In chapter 27, "Public Participation in International Negotiation and Compliance," Lalanath de Silva accesses the collective impact of factors that make European and U.S. civil-society organizations more influential in the negotiation process than Southern groups. De Silva analyzes the benefits and costs of civil-society participation and offers a two-prong strategy to change the balance of power by obtaining "(a) a seat at the table and a voice in the room in the international negotiations for significant and equitable numbers of Southern civil society organizations; and (b) solid capacity-building, increased democratic space, and freedoms and greater influence over Southern governmental decision-making and politicians at the national level" (p. 576). In chapter 29, "Sustainable Development Versus Green Economy: The Way Forward?," Shawkat Alam and Jona Razzaque illuminate the fundamental justice issue. They argue that