

In one of his earlier works,⁵ as well as in this book, Turner notes that the acceptance of the concept of sustainable development at the expense of a fundamental environmental right was a compromise and a policy choice within the international community. I believe the same could be said about the draft global environmental right treaty he proposes. Ideal and necessary as it could be, with the problems inherent in treaty formation I suspect that if ever there were a time for global stakeholders to gather and draft such a treaty, many of the provisions suggested by Turner would need to be tweaked in order to find acceptance. Nonetheless, Turner himself acknowledges that the draft is not perfect and that more research needs to be done. This book is therefore part of an ongoing research project. Environmental rights sceptics would do well to read this book, as would those grappling with how to frame such a right.

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International Environmental Law and the Global South,
edited by Shawkat Alam, Sumudu Atapattu, Carmen G. Gonzalez & Jona Razzaque
Cambridge University Press, 2015, 631 pp, £99.99 hb; ISBN 9781107055698

International Environmental Law and the Global South touches upon an important theme, namely the enduring North-South conflict in international environmental law. Scholars from the Third World Approaches to International Law (TWAIL) school have long predicted that patterns of exploitation continuously repeat themselves in different fields of law, whether under human rights law during colonial times, international economic law in post-colonial times, or international security law in recent decades. These patterns of exploitation are once more visible in environmental law, in particular in climate change law. A key question arises: is the changing structure and membership of North and South changing the main elements of the relationship between countries? Having confronted this question many times in my own research, I tend to return to the answer that patterns of exploitation between rich and poor, indeed, will remain even if membership changes. *International Environmental Law and the Global South* offers some important insights into this challenge.

Former Justice Weeramantry of the International Court of Justice (ICJ) sets the tone for the book in the Foreword by stating that '[t]he 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

⁵ S. Turner, 'The Human Right to a Good Environment: The Sword in the Stone' (2004) 4(3) *Non-State Actors and International Law*, pp. 277–301, at 277.

appearance of compliance with them' (p. xxviii). The book presents evidence of this violation with regard to both states and multinationals, and argues that the latter, which 'operate in the grey zone between international law and national law, ... have traditionally escaped scrutiny and accountability at the international level' (p. 3). More broadly, the key elements of this North-South divide analyzed in the book are that: (i) the global North has exploited the environment and externalized environmental impacts with impunity and thus owes an ecological debt to the South; (ii) the North has avoided taking its responsibility for cleaning up the mess it has caused, while imposing unilateral environmental requirements on the South, which in turn affect its ability to meet the basic needs of its population; and (iii) the ecological concerns of the North and the South differ substantially. The former have impacts on a larger geographical and temporal scale while the latter are more local and immediate.

Part I offers an historical review of the relations between the North and the South. As Rafiqul Islam explains, the relationship can be traced back to the doctrines of discovery and guardianship, which allowed for control and subjugation of the lands and their peoples with the intent of spreading colonial values and moving away from the system of mutual respect which predated colonial conquest. International law was bent to suit the interests of the colonizers. The Congress of Vienna (1815) created a Eurocentric system of law and those who wished to enter the system had to buy into European values. The League of Nations allowed a mandate system which allocated states under the defeated German and Ottoman empire to other states, and the United Nations (UN) established a trusteeship system to govern countries of the South. These measures in effect legitimized colonization until it was declared illegal by a UN General Assembly Resolution of 1960 which gave rise to the right of colonial self-determination.¹ North-South tensions still continue in the struggle over permanent sovereignty over natural resources, economic self-determination, and the new international economic order.

Ruth Gordon's contribution argues that the global community is locked into a path of unsustainable development. Sumudu Atapattu examines three categories of principles emerging from international law, human rights law, and environmental law, and argues that there are deep North-South divisions in their adoption, interpretation, and implementation. Karin Mickelson shows that 1972 marked the beginning of the North-South divide on environmental issues when Southern environmental challenges were seen as capable of being addressed by development, the very development that had caused Northern environmental problems. Ved Nanda adds that a key problem with the global legal system is that it is incoherent in terms of institutional arrangements and inconsistent in terms of the financing that needs to be provided. Bharat Desai and Balraj Sidhu argue that the replacement of the Commission on Sustainable Development with the High-level Political Forum on Sustainable Development, in 2013, could lead to internalization of sustainable

¹ Declaration on the Granting of Independence to Colonial Countries and Peoples, UNGA Resolution 1514 (XV), 14 Dec. 1960, available at: [http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/1514\(XV\)](http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/1514(XV)).

development, but states will need to avoid institutional clogging while taking cognizance of the realities on the ground.

In Part II (on examples from international environmental law) Louis Kotzé argues that human rights approaches promote a dialogue between the North and the South and can pre-empt certain policy choices, but the human rights-environment interface still needs to be determined. Jorge Cabrera Medaglia submits further that, despite the disputes regarding access and benefit sharing (ABS) in the context of the Convention on Biological Diversity (CBD)² and its Nagoya ABS Protocol,³ the growing jurisprudence in this area can help to safeguard the rights of indigenous peoples. Rowena Maguire and Xiaoyi Jiang look at the role of the BASIC (Brazil, South Africa, India and China) countries in shaping climate negotiations and argue that, while they want power, they are shy of taking responsibility, and their behaviour has blurred traditional North-South divisions. Chidi Oguamanam sees energy security firstly as an argument to justify preferential treatment for the domestic bioenergy sector in the United States (US), and thereafter as the reason for market-based environmental policies that led to large-scale land grabbing not just by the US, the European Union (EU), and Japan, but also by the rapidly developing countries. Zada Lipman argues further that the ‘dumping’ of hazardous waste in developing countries continues through loopholes and the lack of a liability and compensation mechanism. Carlos Bernal argues that the right to water can be better interpreted in law by claiming, *inter alia*, that proportionality is a better standard than reasonableness and is the minimum core for courts that wish to enforce constitutional rights to water.

Part III of the book looks at trade and investment law. Shawkat Alam argues that, although the World Trade Organization (WTO) Agreement on Sanitary and Phytosanitary Measures (SPS Agreement)⁴ has the potential to promote sustainable development in trade, some SPS measures ‘lock Southern countries out of Northern markets’ (p. 315) and these countries often do not have the skills to challenge such measures as disguised protectionism. Shyami Puvimanasinghe looks at the international investment regime as both bridging and reinforcing the North-South divide and expresses the hope that incremental progress may help to achieve sustainable development. Shalanda Baker looks at project finance and argues that, despite its positive intentions, ‘this could actually undermine the goals of sustainable development, lead to greater inequality and subordination, and diminish opportunities for participation by affected communities’ (p. 338). Benjamin Richardson argues that international environmental law should hold sovereign wealth funds accountable for socially and environmentally irresponsible investments and that the current Santiago Principles of 2008,⁵ which

² Rio de Janeiro (Brazil), 5 June 1992, in force 29 Dec. 1993, available at: <http://www.cbd.int>.

³ Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity, Nagoya (Japan), 29 Oct. 2010, in force 12 Oct. 2014, available at: <https://www.cbd.int/abs>.

⁴ Marrakesh (Morocco), 15 Apr. 1994, in force 1 Jan. 2015, available at: https://www.wto.org/english/tratop_e/sps_e/spsagr_e.htm.

⁵ International Working Group of Sovereign Wealth Funds (IWG), *Sovereign Wealth Funds: Generally Accepted Principles and Practices – ‘Santiago Principles’* (IWG, 2008), available at: <http://www.iwg-swf.org/pubs/eng/santiagoprinciples.pdf>.

govern such funds, scarcely refer to environmental issues. Sara Seck's examination of transnational corporations shows that, despite the increasing response of these corporations to the resistance of local communities, the diversity and poor integration of legal systems still enables the systematic exploitation of local communities.

This chapter flows nicely into Part IV, which examines environmental justice issues in relation to specific groups. The chapters explore how the global food system benefits the North and the rich at the cost of the South and the poor; how small island states and indigenous peoples still do not have a clear legal remedy to help them cope with the impacts of rising sea levels and how the debates on natural versus climate change disasters are framed; how privatization of water has marginalized the South; and how global energy discussions bypass the issue of energy poverty.

The last part of the book (Part V) discusses the conditions under which South-South cooperation may help to contribute to achieving sustainable development; whether and under what conditions participation can harness the responsiveness of international law; whether access to legal remedies may make for a more responsible North; and whether, ultimately, political pragmatism is the only way forward.

In the final analysis, this substantively and empirically rich book provides a deep analysis of the historical roots, the patterns of exploitation, and the changing details of how the relations between the rich and the poor evolve over time. I would recommend this book to all those who are interested in how and why North-South issues dominate the international agenda, even as many observers try to wish them away by arguing that the world is changing dramatically. However, it wavers between two concepts: a radical interpretation of sustainable development which questions current capitalist growth models, and a more pragmatic interpretation which seeks incremental change. It also wavers between two story lines: will the rich always exploit the poor even when the poor become richer, or will the poor counter the rich and set a new tradition? Perhaps it is not fair to expect an answer to either question when we are in the middle of the struggle to achieve sustainable development. However, this volume cautions against any facile representation of the South as morally superior. Richer Southern countries like China apparently replicate the behaviour of the North in relation to the remainder of the South. This can enhance the power of the South, while at the same time marginalizing it further. Observations such as these urge the reader to take seriously the more radical storyline suggested. Maybe sustainable development will truly be achievable only when society leaves the capitalist growth paradigm, and the super-rich, behind.

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