

## BOOK REVIEWS

*Sustainable Justice: Reconciling Economic, Social and Environmental Law* Edited by MARIE-CLAIRE CORDONIER SEGGER and CG WEERAMANTRY, with a Preface by Harold Koh [Martinus Nijhoff Publishers, Leiden/Boston, 2005, 598 pp, ISBN 9004141820, €115/US\$ 155]

A book that proposes to reconcile economic, social and environmental law provokes a sceptical reaction in some international lawyers. Especially when it introduces a new legal norm, arguably with its own irreconcilables — ‘sustainable development’. Two examples, taken from many, illustrate the problem. What does an international tribunal do when a country prescribes ecologically-friendly harvesting methods for imported fish, and these rules conflict with internationally-agreed principles of liberalized trade? How does the World Bank decide upon a funding proposal that promises new livelihoods for a poverty-stricken community yet threatens an ecosystem? Usually, it attempts to address the conflicts with a particular range of legal norms that are recognized within the field as legitimate, convincing and applicable. Whether the norm of ‘sustainable development’ can fulfil these requirements is an important question. *Sustainable Justice: Reconciling Economic, Social and Environmental Law* can be regarded as the ‘manifesto’ that says that it can and should and even that it does.

The edited collection draws on movements within the international community that affirmed the long-recognized concept of ‘sustainable development’. In 2002, delegates at the Johannesburg World Summit for Sustainable Development reaffirmed that a reconciliation of the economic, social and environmental needs of humanity was essential. These goals are considered as merely aspirational by some, but there is no doubt a large cohort of international lawyers who find value in citing the principles and confirming them. The present editors, former Vice-President of the International Court of Justice, Judge CG Weeramantry, and Director of the Centre for International Sustainable Development Law (CISDL), Ms Marie-Claire Cordonier Segger, strive towards constructing a new field of law, by combining the narrow questions of law with the broader questions of ‘legal process’, and in so doing, offer a grounded account of the evolution and practical use of sustainable development law.

As detailed in the preface by Harold Koh, the process of transnational public law depends upon a variety of participants and fora. Koh credits the volume for recognizing that sustainable development law evolves through the participation of an increasing range of actors, including intergovernmental organizations, non-governmental organizations, private business entities and ‘transnational moral entrepreneurs’. The editors have solicited contributions from a wide range of actors within the international community, including international and domestic judges such as Justice Albie Sachs, present Justice of the Constitutional Court of South Africa, international civil servants such as Ko-Yung Tung, former Vice President and General Counsel of the World Bank, as well as academics, activists and researchers.

In situating sustainable development within ‘transnational legal process’, Koh describes how the internationalization of norms of sustainable development occurs within existing and evolving fora, and according to divergent legal, social or political processes. Such processes are complex, disaggregated and hard to predict. For example, domestic courts apply international law, international negotiations revisit domestic jurisprudence, academic inquiry publishes legal developments and grassroots activism targets international negotiations. Informal consultations and information-sharing is also central to this process; indeed, many of the contributors attended an international conference co-hosted by the United Nations Environment Programme, the World Bank, the International Law Association and the Centre for International Sustainable Development Law (CISDL) in Montreal, Canada, in 2002, and their participation formed the basis of this volume. It is a very different template for influencing legal and policy change than the period of mega-conferences of the 1990s, and the earlier Rio Declaration on ‘sustainable development’ in 1992.

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The structure of the book highlights the differing transnational processes. It begins with chapters on courts and tribunals (Part I), where the terminology of 'sustainable justice' appears. The book reverts to the language of 'sustainable development' with specific examples of sustainable development law (Part II). It continues with questions of implementation (Part III) and concludes with future directions (Part IV). It also includes a comprehensive list of relevant treaties, cases and declarations, as well as a selection of recommended readings. Although these materials generally precede the 2002 World Summit, they are a useful reference tool for practitioners and scholars.

Part I places international and national courts and tribunals at the centre of sustainable development law. The contributing judges include the co-editor, Judge Weeramantry, and distinguished domestic judges such as Justice Gonthier, former Justice of the Supreme Court of Canada, Justice Banerjee, former Judge of the Supreme Court of India and Justice McNally, former Appellate Judge of the Supreme Court, Zimbabwe. The judges propose that sustainable justice can be achieved through commitment to international law, a spirit of 'fraternity' and the adoption of new concepts such as socio-economic rights and other human rights. These reflections provide an uncommon insight into the cross-fertilization and development of judicial norms, and the motivations of central participants within the judicial process, or at least, of those who are talking to each other.

The chapters in Part II consider the integration of economic, social and environmental law within several topics of international concern, such as climate change and biodiversity conservation. The convergence of laws, procedures and institutions into set issue-areas has been noted and studied by 'regime theorists', the first being Stephen Krasner within the discipline of international relations. The contributors to Part II draw on this theoretical space and focus on particular regimes. Canvassing international organizations such as the WTO, government networks such as the International Competition Network, and voluntary initiatives such as corporate social responsibility, the contributors describe the separate policy areas and call for increased attention to the linkages between them. Direct and comprehensive case-studies from desertification, land tenure and water tenure reform, biodiversity, climate change and health law are also offered. These factual overviews demonstrate the highly sectoral nature of international law, and provide useful and succinct information about the relevant regimes. However, while there is a hint to problems of enforcement and efficacy within the regimes, these important challenges remain under-explored. This is perhaps unsurprising given the institutional affiliation of several of the contributors, whose technical and professional prowess is otherwise extremely valuable. A reader seeking a fuller examination of these issues could instead locate further reference material in the comprehensive bibliography.

Moving to the 'implementation' of sustainable development law, Part III contains informative chapters that consider issues of participation, transparency and access. International civil servants give general, if again uncritical, details about the Aarhus Convention and the IMF and World Bank's financing initiatives. Case-studies on water governance that include a description of 'The Access Initiative', a coalition of NGOs that seek greater transparency in environmental decision-making, are offered. Useful examples are also given in the area of compliance and dispute settlement, including from the Spanish-based International Court of Environmental Arbitration and Conciliation. The Part demonstrates a range of activities within international law that can be said to implement the principle of sustainable development, and the reader is left with an enhanced understanding of the width and variety of relevant legal processes.

Part IV discusses the 'New Delhi Declaration on Principles of International Law Relating to Sustainable Development', which was developed by the International Law Association and finalized in 2002. This Declaration is supported by the 'International Jurists Mandate for the Implementation of International Sustainable Development', signed by over 2000 judges, academics and legal professionals and agreed at the Montreal conference in 2002, which is reproduced in this Part. Among other things, the Declaration affirms that 'consideration should be given to the interaction of States, intergovernmental organizations, peoples and individuals, industrial concerns and other non-governmental organizations as participants in multilateral development co-operation'. This goal is also recognized by a third international process: the Johannesburg Plan

of Implementation, which emphasizes coherence, coordination and cooperation between international organizations from each 'pillar' of sustainable development. Among other things, the Plan emphasizes the roles of large representative bodies such as the UN General Assembly and small issue-led groups such as the UN System Chief Executives Board for Coordination. By providing information about these processes, the volume not only highlights the presence of a range of actors and fora in sustainable development law, but also reinforces its own worth as a collaborative project.

This Part, considering as it does 'future directions', contains a closing chapter by co-editor Segger. She asks whether elements of a 'legal test' for sustainable development can be applied to assist in the accommodation, reconciliation or integration of competing social, economic and environmental claims. She surveys the recognition of sustainable development within international law and concludes that whilst not binding, the notion can be recognized as a field of law. She then isolates certain elements that a jurist could take into account when attempting to reconcile social, economic and environmental claims, such as an investigation of the interests at stake, a consideration of procedural avenues to accommodate these competing interests and a substantive inquiry into issues of common but differentiated responsibility. Segger calls for the recognition of the interstitial concept of sustainable development to ensure that all social, environmental and economic issues have been included in this process.

Segger's enthusiasm for the concept of 'sustainable development' reflects the overall tone of the book. The editors seem at times to be attempting to 'brand' sustainable development law. In doing so, the book tends to revisit themes and quote from a repeated circle of work emanating from the activities of the CISDL. In response, the reader might doubt that a field of law can be created in such a wholesale, deliberate, way; instead, the norm of sustainable development might be regarded as more evolutionary and reflexive. But whether this book is regarded as 'evidence of' or a 'catalyst for' sustainable development law, its strongly collaborative foundations and expansive outlook make it a convincing read for all those faced with the problem of conflicting economic, social and environmental law.

MARGARET A YOUNG

*The Development of Legal Instruments to Combat Racism in a Diverse Europe* by JAN NIESSEN and ISABELLE CHOPIN (eds) [Martinus Nijhoff Publishers Leiden/Boston (2004) ISBN 90-04-13686-X €95/US\$129 (H/bk)]

This collection examines core dimensions of legal protection against racism and race discrimination in Europe emanating from the Council of Europe and the European Union. It brings together the work of several prominent academics, practitioners and civil society activists involved in developing and implementing the laws in question.

The first part of the book explores the Council of Europe anti-discrimination standards, particularly those of the European Convention on Human Rights. It is comprised of contributions by researchers and practitioners of ECHR law, including Jeroen Schokkenbroek, who heads the Human Rights Law and Policy Division in the Council of Europe. It offers a critical discussion of the 'accessory character' of Article 14 applying only in relation to ECHR rights and not as a free-standing, substantive provision. While modest in comparison with Article 26 of the ICCPR, the advance of Protocol 12 to the ECHR is welcomed, with its purpose as 'a general prohibition of discrimination in the form of an independent, free-standing guarantee.'

EU law is the subject of the second part of the book, with an emphasis on Article 13 EC of the Amsterdam Treaty, which, although not itself capable of having direct effect, provided the enabling legal basis for legislation that would implement the principle of equal treatment between persons irrespective of racial or ethnic origin. The substantive and procedural provisions of Directive 2000/43/EC are an important subject of analysis, which acknowledges the high minimum standard established but also addresses its more controversial features, such as the preservation of difference

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