

## BUCHBESPRECHUNGEN / BOOK REVIEWS

*Shawkat Alam, Sumundu Atapattu, Carmen G. Gonzalez, Jona Razzaque (eds.):*

**International Environmental Law and the Global South**, Cambridge University Press, New York 2015, 656 pages, hardcover, \$ 44, ISBN 978-1316621042

International relations and international law are often governed by the differences and inequalities persisting between poor and wealthy nations. They result from colonial history, economic dependence, effects of global trade and the possibilities for education and scholarship. Those differences and inequalities play out in all areas of international law, yet their impact on international environmental law is particularly important. For example, with regard to climate change, it is an established fact that environmental degradation and other phenomena caused by global temperature rise have more significant and far-ranging effects in the so-called Global South, which unites some of the poorest countries. Here, problems range from desertification and other destruction of natural habitat to an increase in natural disasters such as floods and hurricanes. Countries of the Global South are not, however, the countries primarily responsible for environmental degradation and climate change. The bulk of global greenhouse gas emissions come from countries of the so-called Global North, including China. Inequalities also persist in other areas of environmental law, such as concerning waste disposal, water, resource extraction and protection of endangered species, habitat and wildlife. What is more, the underlying environmental issues are also often governed by other international legal regimes, such as trade, investment or human rights. It is therefore vital to hear more from voices from the ground, i.e. the most affected developing countries: how these problems could be better addressed, what new solutions could be tested, and what environmental regulation could address increasing dependence. This is all the more important since most literature on international environmental law emanates from Europe and North America.<sup>1</sup>

This timely edition by Alam, Atapattu, Gonzalez and Razzaque, all eminent scholars of international environmental law, is an important contribution to the debate. As problems are usually addressed in a rather sectorial manner, the international environmental law literature has lacked a collection of essays on the Global South. The editors have brought together many respected scholars and practitioners to represent southern perspectives, yet only a few are from academic home institutions in those countries: most teach or practice in the northern hemisphere.

The book consists of five parts. The first part sets the book's scene for a southern perspective on international environmental law, dealing with the history of the North-South divide and perspectives of colonial history. It also explains some current crucial concepts of international environmental law that arose in reaction to persisting inequalities between

1 United Nations Framework Convention on Climate Change (UNFCCC), Part A, 38.

North and South. For example, Ruth Gordon addresses the history of “Unsustainable development”, while Atapattu discusses “The significance of international environmental law principles in reinforcing or dismantling the North-South divide”. The second part tackles particular examples of international environmental law, where the North-South divide has become of relevance. Here, Louis J. Kotzé deals with “Human rights” and Chidi Ouagamanam refers to the problems of “Sustainable development in the era of bioenergy and agricultural land grab”, while Zada Lipman focuses on “Trade in hazardous waste”. The third part refers to the link between trade, investment and sustainable development. Amongst others, Alam discusses “Trade and the environment: perspectives from the global South” and Sara L. Seck reflects on “Transnational corporations and extractive industries”. The fourth part takes a special look at environmental justice and vulnerable groups. This topic is discussed, for example, from the perspective of food justice (Gonzalez), global climate change (Maxine Burkett), natural disasters and climate change (Paul G. Govind and Robert R. M. Verchick) and energy justice (Lakshman Guruswamy). A final fifth part regards the challenges and options for states of the Global South. Among possible solutions it highlights aspects of South-South cooperation (Koh Kheng-Lian, Nicholas A. Robinson), public participation in international negotiation and compliance (Lalanath de Silva), access to remedies (Razzaque) and evolution of the principle of sustainable development (Alam, Razzaque).

In the introduction to the first part, Atapattu and Gonzales explain the book’s overall approach. They examine the North-South divide and existing tensions on each side, underlining historical context (p. 3), the role of non-state actors, in particular transnational corporations (p. 3), and the impact of indigenous mobilization (p. 3) as relevant aspects. The editors chose topical issues like climate change and food security, where the North-South divide is most apparent (p. 4), and this illustrates the main approach and distinctive contribution of the book. It takes the perspective of the South in order to emphasize “the need to address inequities and inadequacies in the international environmental law regime” (p. 5).

In concentrating on the southern perspective, the book certainly provides the hitherto lacking southern discourse on some of the most topical discussions of international environmental law. Nonetheless, there are some obvious downsides to this approach: as Arif remarked in his recent review,<sup>2</sup> its one-sidedness can hardly be ignored. Not a single contribution in the book provides a counterweight to the southern perspectives, explaining or justifying northern approaches and some of the resulting inequalities. To obtain the full North-South picture on international environmental law, the book must therefore be read in conjunction with texts that provide the missing northern perspective, or with articles that react explicitly to some of the theses presented in the book. Likewise, the book cannot present alternative global solutions, like North-South cooperation, that build on addressing North-South conflicts or inequalities, as they can hardly be found without considering the views and perspectives of the North.

2 Abdullah-Al Arif, *Review of European, Comparative & International Law* 25 (2016), p. 401.

The editors also write that they are aware that the terms North and South oversimplify the concepts of wealthy nations and their less prosperous counterparts (p. 11) and strive to explain the complexities and heterogeneities in their relationship (p. 11). Indeed, some of the complexities transpire very clearly from certain chapters. Ouagamanam's chapter on land grabs, for example, vividly outlines how players from North Africa, in particular Saudi Arabia, have become involved in land grab policies in West Africa and elsewhere. Given these growing complexities and the hazy line between South and North, one wonders whether there are other alternatives for assessing the differences and inequalities that persist in international environmental law between wealthy and poorer countries. In any case, the current distinction fits the other purpose of the book, namely to enrich the literature on international environmental law with voices from the South (p. 19). Yet, the simplification somehow makes the quest for nuanced solutions to the current problems of international environmental law more difficult.

The book purports to focus on southern perspectives on international environmental law. Nonetheless, on certain topics, this focus is not entirely clear. Various chapters also explore topics of related fields, such as international investment, trade or food law and their overlaps and overall relationship with international environmental law. In some of the presentations, the relations between cause and effect (on international environmental law) are perhaps not made sufficiently clear. Some contributions, like the chapter by Ouagamanam, only portray the detrimental impacts and effects of exploitative policies like monocultures for bioenergy and land grabs on southern agriculture and environment (e.g. p. 247 et seq.). Although these effects cannot be ignored, some of the roots of the problems lie in other legal regimes. In the case of land grabs, the permissive and facilitating regulations of international trade, investment and finance law are certainly a problem. They appear to leave little room for southern countries to ward off exploitative policies. However, the specific environmental issues, in particular answers to the question of how international environmental law can address the issues, remain underdeveloped. Ouagamanam, for example, only refers to the procedural rights and duties of public participation, access to information and impact assessments, which are frequently disregarded in the processes resulting in land grabs (p. 250). Questions like how international environmental law could specifically address monocultures and pollution related to hydraulic fracturing or intensive animal farming therefore remain unanswered.

Another example is the chapter by Jackie Dugard and Elisabeth Koek on water wars (p. 469 et seq.). Building on individual case studies, it tells the story of how privatization undermined the right to water in Latin American countries and South Africa. The case studies are a forceful illustration of the development and success of campaigns for the right to water in those regions and they reflect how privatization has "exacerbated socio-economic inequalities and adversely affected people's access to water" (p. 489). However, the exact implications for international regulation of the right to water, for international investment law and international law in general remain unclear. Although the authors indicate in their conclusion that the cases illustrate how the traditional dichotomy between public and private

has broken down (p. 490), the implications of this trend for international (environmental) law, which is built on the *publicness* of the issues addressed, remain vague. This too leaves the options for possible answers and solutions to the problem unanswered. Should we start thinking about the international legal responsibility of multinational corporations? Should states be held accountable for privatizations? Should international investment law begin to take human rights and environmental standards into account?

Despite the foregoing, most chapters vividly illustrate the failure of the current international legal environmental order, or suggest what solutions providing more equity to southern countries could look like.

To name a few examples, Atapattu's chapter (p. 74 et seq.) is a good account of the development of the principles of international environmental law. It considers the interests of North and South and illustrates when and why different principles were introduced and whether they were supported by the North or South. It elucidates the underlying alliances, which often cannot be ascribed to South or North as they transcend any geographical division. Atapattu concludes that there is no clear winner, North or South, whose principles fared better (p. 108). She concludes that the divide between North and South over environmental issues can only be overcome by invoking the responsibility of all parties (p. 108).

Another example is Lipman's chapter on trade in hazardous waste (p. 256 et seq.). This pressing problem illustrates how southern states are at the mercy of the ineffectiveness and loopholes of international environmental regulation. It is an established fact that hazardous waste is often traded between North and South. Pictures of dumps of toxic waste from mobile phones and other electronic gadgets being burned and recycled in southern countries have been in the news worldwide. In her chapter, Lipman first illustrates the international legal regime applicable to hazardous wastes and the deficiencies in its implementation. She then uses the example of a dumping incident in Abijan, Cote d'Ivoire, to illustrate the gaps in the current legal system (p. 269). Finally, she highlights how the current system could be strengthened and supplemented to prevent further trade in hazardous substances (p. 271 et seq.), for example by strengthening the prior informed consent procedure, updating the Basel ban and extending producer liability schemes.

A final chapter that stands out in depicting a southern perspective on international environmental law is by Govind and Verchick and concerns natural disaster and climate change (p. 491 et seq.). It examines the options that international climate change law offers for reactions to risks of natural disasters, in particular the loss and damage system under the United Nations Framework Convention on Climate Change (UNFCCC). As the authors rightfully claim, there is a significant gap between the international law on climate change and the law on disaster risk reduction (p. 491). By assessing the rules of the UNFCCC and citing a case study, they argue that the law on climate change adaptation in the UNFCCC offers some guidance on how to address this issue (p. 492). The authors illustrate the problem of using the analogy of climate change adaptation and disaster risk reduction, which they mostly view as relying on the concepts of group responsibility and local vantage (pp. 498-500). The case study from Surat, India, in which local communities successfully

teamed up to combat repeated flooding, very clearly illustrates that group responsibility remains an important issue and needs to be addressed so that the law on climate change adaptation may be successfully invoked in disaster risk management.

All in all, the book is a most valuable contribution to the existing literature on international environmental law. Its contribution is greatest where it reveals the differences on environmental issues between North and South, where the problems assessed reflect particular problems or solutions arising in this relationship and where the North-South perspective on international environmental law leads to novel approaches to environmental protection, globally as well as regionally or nationally. It is therefore to be hoped that many more southern authors follow this initiative and express their views on the current international environmental order, and that northern authors join the discussion.

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