

January 1995

# Review of Greening International Law, edited by Philippe Sands

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## Recommended Citation

David A. Wirth. "Review of Greening International Law, edited by Philippe Sands." *American Journal of International Law* 89, (1995): 244-247.

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one hand, and extensive communal violence on the other" (p. 179), showing that the CSCE has little to contribute in the (relatively) stable democracies and is unable to operate efficiently in areas of severe conflict such as the former Yugoslavia. One topic that could usefully have been discussed more fully by Forsythe is the potential role of the European Bank for Reconstruction and Development (EBRD), which he mentions only in passing. The EBRD is the only international financial institution that refers to the promotion of human rights in its statute, although it has not yet shown much initiative in this respect.

The final section of the book deals with human rights education and discusses developments both in Europe and in other parts of the world in which innovative human rights education programs exist. The importance of this section should not be underestimated. Indeed, the experience with human rights education programs of some of the countries starting to develop rights-protective regimes may be very relevant to Western countries with long democratic traditions.

Certain weaknesses of the book should be noted. First, human rights situations can change quickly and dramatically, and more than two years elapsed between the preparation of the papers for this book and its publication. While some factual information may now be out of date, however, the book is sufficiently general in both themes and conclusions that it remains useful and interesting.

A more serious problem is that the book fails to recognize the relevance of changed economic conditions, particularly economic hardships, to possibilities for attaining human rights. Donnelly, in his opening chapter, pays some attention to the specific problems that market economies pose for rights-protective regimes, briefly recognizing that this economic policy choice may indeed result in human rights problems, particularly with respect to economic and social rights. But the book otherwise almost completely ignores the economic conditions in the "New Europe" (although Gibney and Holländer mention it in passing). Unfortunately, the book in this respect appears to reinforce the misconceived traditional view that fulfillment of human rights and economics can be separated, and that eco-

nomie austerity will not influence human rights implementation.

Finally, the title is somewhat inaccurate, in that the book deals with only a limited number of rights and discusses relatively few countries. Nevertheless, the book is an important contribution to the body of literature on civil and political rights in countries in transition to democracy.

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*Greening International Law*. Edited by Philippe Sands. London: Earthscan Publications Limited, 1993. Pp. xxvi, 253. Index. Paper, £15.95.\*

Thanks to the recent proliferation of books on international environmental law and policy, there are fewer and fewer ecological niches for a new work to occupy. Overcoming intense "population pressure," *Greening International Law* offers a refreshing approach that adds a healthy diversity to the existing field.

That said, a number of the eleven contributors to this collection, quite obviously having taken their subject matter to heart, have assimilated the virtues of recycling. Four of the pieces previously appeared in similar or identical form elsewhere; one of those contains a disclaimer that it will serve as the basis of yet another publication; and a fifth essay refers readers to an earlier publication by the same author for "fuller treatment." Most, although not all, of the chapters are well documented. The book appends a helpful glossary of terms and abbreviations to assist readers in sorting through the alphabet soup that characterizes this discipline, lists of cases and international instruments, and a reasonably useful index.

Despite this collection's broad scope, the individual contributions have considerable coherence and consistency. All the authors stress international law as an instrument of environmental policy goals, deemphasizing

\* A U.S. edition of *GREENING INTERNATIONAL LAW* (The New Press, Oct. 1994) includes an extended introduction by Philippe Sands and new chapters by Daniel Bodansky, S. Jacob Scherr & Jared E. Blumenfeld, Richard Tarasofsky and Alberto Szekely. Five related documents, from the Stockholm Convention to chapters from Agenda 21, are included as appendices.

purely doctrinal legal considerations while highlighting the social, political, policy and scientific contexts of the subject matter. The contributors uniformly adopt a practical, rather than academic or scholarly, perspective—in some cases apparently reflecting extensive firsthand experience with their topics. Consistent with this approach, abjuring the treatment of law in isolation, the articles constituting *Greening International Law* are written in a style accessible to the generalist as well as the specialist. Experts in this discipline are certain to glean new insights from the historical and factual detail. But political scientists and those in other nonlegal disciplines, as well as lay persons for whom this subject matter holds appeal, can also be assured of a “good read.” Interestingly, despite what might be described as the “progressive” tone of the subject matter and most of the authors’ approaches to it, there are no iconoclastic revisionists on the roster. All the contributors proffer incremental, pragmatic recommendations for reform that remain comfortably within accepted frameworks of international law.

The articles fall roughly into two categories: those that address questions of international governance, and case studies that examine discrete subject matter in an international institutional setting. Two major events of recent years suffuse the pieces in the first category: the United Nations Conference on Environment and Development (UNCED), widely dubbed the “Earth Summit,” held in June 1992 in Rio de Janeiro and attended by more than a hundred heads of state or government, and, to a lesser extent, the 1987 report of the UN-established World Commission on Environment and Development, often known as the “Brundtland Commission” after its chair.<sup>1</sup>

The post-Rio analyses all attempt to grapple with similar issues, albeit in a variety of contexts. The operational significance of sustainable development—the overarching focus of the Earth Summit—is a consistent theme. Two of the authors, Marc Pallemmaerts and Ileana Porrás, take on this question directly through an analysis of the Rio Declaration on Environment and Develop-

ment,<sup>2</sup> one of the principal products of this seminal meeting. Pallemmaerts, a clear skeptic, criticizes as counterproductive the Rio meeting’s preoccupation with sustainable development and questions whether “the new ideology of ‘sustainable development’ undermines the autonomy of environmental law as a body of rules and standards designed to restrain and prevent the environmentally destructive effects of certain kinds of economic activity” (pp. 18–19). Porrás, who served as Legal Adviser on the Costa Rican delegation to UNCED, adopts a somewhat more sympathetic point of view that emphasizes the competing priorities of developing countries. From this perspective, the principal value of the Rio Declaration is its incremental, as opposed to radical, tone. Still, between these two essays, the reader cannot help but conclude that one of the primary products emanating from a convocation billed as decisively significant for the future health of the planet fell considerably short of expectations.

The talismanic concept of sustainable development pervades most of the other contributions, whether on international trade as addressed by James Cameron, multilateral development banks as scrutinized by Jacob Werksman, or the European Union (EU) as examined by Marina Wheeler. The very breadth of international settings examined within this work, many of which are not inherently “environmental” in nature, demonstrates how pervasive the “greening” of international law has already become. At the same time, these analyses demonstrate how much more remains to be done if the ultimate goal of the “greening” process—the full integration of environmental values into the larger body of international law to which the title advert—is to be realized.

Cameron identifies many of the current environmentally related issues arising within the framework of the General Agreement on Tariffs and Trade (GATT). His recommendations include both suggestions for increased deference to national, unilateral trade measures undertaken in pursuit of sustainable development objectives and “ensuring that the interests of developing countries are fully taken into account” (p. 121). Because those national, unilateral

<sup>1</sup> See WORLD COMMISSION ON ENVIRONMENT AND DEVELOPMENT, *OUR COMMON FUTURE* (1987).

<sup>2</sup> UN Doc. A/CONF.151/5/Rev.1 (1992), reprinted in 31 ILM 876 (1992).

measures are most likely to be applied by the governments of industrialized countries to imports into areas under their jurisdiction, and because exports from developing countries are apt to be disproportionately affected by such measures, these two goals are more than just potentially contradictory.<sup>3</sup> But a mechanism for reconciling these divergent aims receives scant attention. Werksman emphasizes the need for a greater voice in the multilateral banks for borrowing-country governments, while largely neglecting the much more difficult question of direct accountability of these international financial institutions to the public in developing countries, who are, after all, the intended beneficiaries of bank lending. While suggesting that the environmental performance of such international institutions as the GATT might benefit from institutional changes modeled on the European Union, Wheeler largely ignores the considerable differences between an international institution based on principles of consent and consensus and a supranational organization that exercises some of the sovereign prerogatives of states and that reflects a substantially higher level of legal and political integration. To identify these limitations is not to criticize the authors or their analyses; instead, this book represents a way station in the process it describes: the evolution of international institutions and law.

Somewhat surprisingly, some encouragement regarding the accomplishments of environmental law comes from three case stud-

<sup>3</sup> For example, Principle 12 of the Rio Declaration on Environment and Development, *supra* note 2, as advocated by a number of developing countries, specifies that "[u]nilateral actions to deal with environmental challenges outside the jurisdiction of the importing country should be avoided. Environmental measures addressing transboundary or global environmental problems should, as far as possible, be based on an international consensus." The United States in response recorded an interpretive statement clarifying that, "in certain situations, trade measures may provide an effective and appropriate means of addressing environmental concerns, including . . . environmental concerns outside national jurisdiction, subject to certain disciplines." See Jeffrey D. Kovar, *A Short Guide to the Rio Declaration*, 4 *COLO. J. INT'L ENVTL. L. & POL'Y* 119, 132-33 (1993).

ies: (1) Lee Kimball's survey of environmental law and policy in Antarctica; (2) Remi Parmentier's evaluation of the history of radioactive waste dumping at sea, and (3) an assessment of the development of international whaling policy, by Greg Rose and Sandra Crane. Taken as a group, these chapters neatly document the give-and-take of the real world of international relations, in which legality is but one consideration. Although that does not appear to be their principal purpose, these concrete examples of international dynamics in action tend to remind the reader of the fragile nature of international law, with its limitations based on consent and consensus. Of all the pieces in the book, these three perhaps most successfully deliver on the promise of the title; they document progressive, incremental evolution—the workaday analogue of the title's somewhat breezy "greening." After traversing these descriptions of how three rather disparate regimes operate in practice, the reader is left with considerable appreciation of the difficulties inherent in managing the global commons. In contrast to the impression left by the essays that treat generic governance questions, the maturation of the regimes described in these three case studies seems to have been remarkably unaffected by the Rio meeting.

Somewhat related to these case studies is an essay by Christopher Stone that appears earlier in the book; he advocates the identification of guardians as advocates for the global commons and the establishment of a global commons trust fund. Some, although not all, of his suggestions have already been put into operation in the form of the Global Environment Facility (GEF), a joint undertaking of the World Bank, the UN Development Programme, and the UN Environment Programme.<sup>4</sup> Moreover, by comparison with the management and governance challenges detailed by Kimball, Parmentier, and Rose and Crane, the challenge of securing funding to protect the global commons seems almost modest.

<sup>4</sup> See Instrument for the Establishment of the Restructured Global Environment Facility, *reprinted in* 33 *ILM* 1273 (1994); Documents Concerning the Establishment of the Global Environment Facility, *reprinted in* 30 *ILM* 1735 (1991) (initial pilot phase).

A chapter by Dan Dudek, Richard Stewart and Jonathan Wiener, though quite interesting in its own right, seems curiously out of place in this book, the bulk of which is devoted to public international law. Instead, the apparent audience for this piece is domestic policy makers crafting new statutory frameworks in Eastern Europe; they are exhorted to eschew technology-based "command-and-control" regulatory approaches in favor of market-based incentives that "harness[] the economic self-interest of each business in the service of environmental protection" (p. 182). Given the subject matter of the other essays in the book, it is unfortunate that the authors of this contribution address international governance questions associated with the global environmental issues of stratospheric ozone depletion and "greenhouse"-driven climate warming only by analogy to domestic regulation, without much attempt to identify or address the potentially significant gap between the two. For instance, the three authors state that market-based approaches "usually require fairly complete and accurate information about emissions or discharges" (p. 189) and "require government supervision and enforcement to ensure that environmental protection goals are achieved" (p. 190). While most municipal systems provide legal and institutional mechanisms that satisfy these needs in some measure, the existence of those conditions in an international legal order based on the consent and consensus of participating states, in which there is no genuine supranational governmental authority, cannot be presumed.

As a whole, *Greening International Law* makes the most of the multiple-author essay format by offering both breadth and depth. Somewhat paradoxically, however, that format also tends to emphasize the fragmentary, problem-specific, even piecemeal nature of international environmental law—a characteristic that UNCED did little to alleviate and may even have exacerbated. For example, it would have been helpful to include a piece connecting lessons learned from the case studies with the generic governance questions addressed in some earlier chapters. As it is, beyond a few introductory pages by the editor, Philippe Sands, the book offers little to suggest how past progress might inform future solutions. For

all its down-to-earth virtues, *Greening International Law*, like the discipline it treats, in the end leaves the reader with a desire for synthesis.

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*A Commentary on the Chemical Weapons Convention.* By Walter Krutzsch and Ralf Trapp. Dordrecht, Boston, London: Martinus Nijhoff Publishers, 1994. Pp. viii, 543. Index. \$185.

The Chemical Weapons Convention (CWC) is an instrument much in need of a reliable commentary. Negotiated over more than twenty years, with extensive annexes and complex, interrelating provisions, the treaty is a landmark of international lawmaking, but far from a model of simplicity. Moreover, apart from one very good summary of the Convention's negotiating history,<sup>1</sup> there has been comparatively little secondary material available on the precise meaning of the Convention's provisions.

This *Commentary* by Krutzsch and Trapp, both of whom played important roles in the Convention's negotiation, does much to resolve these difficulties. The authors present a section-by-section analysis of the treaty, with frequent citations to the Convention's negotiating history and to secondary sources. Their work is likely to be of use, not only as a work of reference, but also for its incisive and thorough analysis of the Convention as a whole.

The authors do an excellent job of communicating their comprehensive knowledge of the Convention. They provide frequent and invaluable cross-references within the Convention—noting, for instance, that a seemingly innocuous provision subjecting chemical weapons development facilities to a declaration requirement (but not to routine inspection) has the indirect effect of altering the status of these facilities for purposes of a challenge inspection. They are also alert to the Convention's many lacunae, some arising from the difficulties of negotiating so detailed an instrument, and

<sup>1</sup> See THOMAS BERNAUER, *THE PROJECTED CHEMICAL WEAPONS CONVENTION: A GUIDE TO THE NEGOTIATIONS IN THE CONFERENCE ON DISARMAMENT* (1990).