

CAPACITY BUILDING FOR ENVIRONMENTAL LAW IN THE ASIAN AND PACIFIC REGION APPROACHES AND RESOURCES EDITED by Donna G. Craig, Nicholas A. Robinson and Koh Kheng-Lian. [(2002), Asian Development Bank, Manila, Philippines, ISBN 971-561-423-X, 943 pages, hard cover] Volume I and II.

The editors of this extensive work, Associate Professor Donna G. Craig, Nicholas A. Robinson and Koh Kheng-Lian, of the International Union for the Conservation of Nature (IUCN – The World Conservation Union), have produced an innovative two volume text primarily funded by the Asian Development Bank (ADB). Their sophisticated representation of the dynamic interdisciplinary policies and practices of environmental law constitutes a unique critique of the Asia Pacific experience in contradistinction to educational resources collated exclusively by Western academics.

Given that half of the world's population resides within the Asian Pacific region, and that the area provides vast examples of commendable practices within areas such as integrated coastal zone management deserving international recognition, Capacity Building for Environmental Law in the Asian and Pacific Region Approaches and Resources is "the first comprehensive environmental law book"¹ based primarily on locally produced materials, and fills a previous void in the literature.

Glazewski and Bradfield contest that "it is the mission of environmental law to integrate economic and environmental considerations in one sustainable management system."² Paragraph 8.20 of Agenda for Environmental Action in the 21st century³ states that implementation of this sustainable development construct at all levels of policy, planning and management is heavily dependant upon the effectiveness of adequate enforcement resources (primarily postgraduate programmes and in service training facilities in

¹Sumida A and anor, pg xiii of Foreword.

²Glazewski J and anor, Environmental Justice and the Legal Process (1999, Juta and Co, Capetown) 113.

³Adopted at the 1992 Rio World Summit on the Environment.

environmental and development law). In response to this Agenda 21 provision, 'intensive capacity building for environmental legal education courses'⁴ directed toward a collective of Asian Pacific law academics was developed. The aim of these training courses was to encourage mainstream recognition of an appropriate model for the teaching of environmental law within countries of the Asian Pacific region and to subsequently enrich endogenous law expertise.

In the Forward of Volume II⁵ Gerald A Sumida (General Council, Office of the General Council, Asian Development Bank) and Rolf Zelius (Chief, Office of Environmental and Social Development, Asian Development Bank, Manila, Philippines) outline the role of the ADB as one of strengthening and expanding the environmental law expertise of people and institutions of the Asia and Pacific region.⁶ This publication is most definitely a pioneering work as it is a comprehensive environmental law book that is suitable to all industries and professions and in fact anyone with an interest in environmental issues affecting the Asian and Pacific Regions.

Volume One and Volume II together comprise twenty-three chapters, each of which contain a succinct introduction in summation of key concepts that are addressed within the chapter. Structurally, the work incorporates a variety of sources ranging from case studies and academic articles, to seminar activities and direct citations from international declarations. The editors collate a complex array of independent information that is neither didactic nor conclusive; the editors readily concede that many aspects of environmental law are yet to be satisfactorily resolved. Acknowledgement of the difficulties in enforcement of sustainable ideals and the need for change within the present system serves to enhance the sophistication of the academics' collective arguments. The most impressive quality of this work is the attention to detail regarding individual case studies. A concise examination of the immediate pressing environmental issues and response strategies within a multitude of specific countries enhances

⁴Training courses instigated primarily as a joint project of the Environmental Law Centre (IUCN), Asia Pacific Centre for Environmental Law (APCEL) and the United Nations Environment Programme (UNEP).

⁵ At xiv.

⁶ At xiv.

the capacity of Asia Pacific law schools to incorporate and promote comprehensive and appropriate law courses within their curricula.

Chapters one, two and three of the work embody a broad contextual introduction to the multi disciplinary field of 'environmental law'. While the role of environmental law as a normative guide for the attainment of global sustainable development forms an inherent foundation of the work, Chapter One⁷ includes a direct reproduction of the Preamble and chapter 8 of Agenda 21.

Environmental law evaluated across nations through the techniques of comparative law provides a foundation for sustainable development and remains a useful indicator of the degree of success that nations actually achieve.

The text discusses various course curriculums such as the Clinical Environmental Law Programme at Pace University New York and acknowledges that environmental law lends itself to a diverse range of teaching methods. This text is certainly a big step forward in that it provides an excellent resource in ongoing education programs throughout the Asian and Pacific regions, and probably beyond. It specifically outlines a teaching strategy and learning objectives before each chapter reinforcing its usefulness as an academic resource.

Detailed case studies relating to national environmental legislation employed within South East Asian Pacific countries, in conjunction with national implementation frameworks fostered within North West Asia and the Pacific Islands, are reviewed within Chapter Five.⁸ It is segmented into concise summaries and workshop accounts directed to reflect the problem areas and strengths of policies and institutions unique to individual countries within the Asian Pacific region. Through providing comprehensive environmental policy profiles in this respect, the text provides numerous relevant models that may be emulated on behalf of other countries experiencing similar or parallel conditions.

The editors' continual inclusion of references on how management systems can be specifically improved to facilitate environmental

⁷Ch1: Introduction to Environmental Law.

⁸Ch 5: Comparative Overviews of Asian and Pacific Environmental Law.

protection greatly enriches the relevance and importance of this work as an innovative research tool capable of inducing positive change.

Alternative approaches to environmental enforcement and regulation within a local, regional, national and international context are summarised within Chapter Six.⁹ Additionally discussed are fault based and strict liability, factors that affect the capacity of parties to adhere to product and process standards and the methodology incorporated within Environmental Impact Assessments.

In reference to integrated sustainable management systems and legislation, Gow emphasizes that “there can be no question that implementation is much more difficult than developing the concept.”¹⁰ His contention is further supported within Chapter Seven¹¹ through a detailed analysis of the extrinsic and intrinsic factors limiting practical enforcement of the 1992 Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal.

While Chapters six, seven and eight refer to the significance of environmental impact assessments as procedural tools, Atkinson stresses in Chapter Eight¹² that “only when environmental awareness has become more widely and deeply rooted in Asia, will the hopes for Environmental Impact Assessments and Environmental Management Systems as instruments of environmental protection be fully realised.”¹³ Given that compliance with environmental laws is increasingly dictated by corporate and industrial management practices, Atkinson submits that satisfactory adherence to environmental protection standards will only be met if greater reliance on EIA and EMS is accompanied by a willingness amidst the public and media to

⁹Ch8: Environmental Regulatory Strategies, Market Mechanisms, Enforcement and Compliance.

¹⁰Gow L , *New Zealand Resource Management Act: Implementing a Major Planning Law Reform* (1991, Ministry for the Environment, NZ) 436.

¹¹Ch 7: Pollution Law, Integrated Management Systems and Transboundary Movement of Hazardous Wastes.

¹²Ch 8: Environmental Management Systems: Approaches to Corporate and Public Agency Environmental Stewardship.

¹³Atkinson, “Environmental Policy and Management in Asia: A Learning Experience” [1992] 1 *Journal of Environmental Assessment and Policy* 497.

chastise multinational corporations which fail to meet minimum standards.

While the integral role of public participation within environmental decision making and enforcement constitutes a recurring theme within the text, collective materials within Chapters Ten and Chapter Eleven¹⁴ thoroughly support the contention that the natural tension between the government and educated citizens in an open democratic process can in fact result in improved environmental protection. Inclusion of Daud Hassan's¹⁵ case study within Chapter Ten regarding public participation in environmental law in Bangladesh provides an impressive comparative critique.

The significance of alternate dispute resolution and the judiciary in facilitating citizen participation enriches the reader's appreciation of themes introduced within the chapters.

Broadly speaking the text takes the view of sustainable development in environmental law emphasising social justice, equity and incorporates social, cultural and economic dimensions.

The sustainable use of fresh water systems and dams is covered in detail and included is an analysis of water catchment in urbanised areas, the treatment of the water and the cost. The collection of articles and case studies covering specific problems and issues faced by countries with the need to share water resources and the impact large dams have on social and ecological factors is discussed throughout Chapter Twelve. Important and controversial issues such as whether or not water should be able to be used as a tradeable commodity are confronted which leads to the big question of whether there should be sovereignty over water? The text tackles some controversial issues and offers a range of opinions and case studies bound to intrigue any reader.

Chapter thirteen is a journey through cultures such as Buddhism, Hinduism and Shamanism and their philosophy of nomadic land use

¹⁴Ch 10: Citizen Participation, Access to Decision making and Empowerment.

¹⁵Hassan, "Public Participation in Environmental Law in Bangladesh" [1999] 4 Asia Pacific Journal of Environmental Law 63.

which, interestingly, we now consider to be ‘sustainable principles’ of land use. It delves into the traditional ways of not only land use but a way of living that sounds so perfect you almost wish it would work that way again. As we all know, industrialisation has depleted many national resources – some to the point of extinction – therefore it is increasingly important to consider the global measures that are currently, and can in the future, be taken in an effort to conserve the earths’ natural resources.

Tarasofsky discusses the shortcomings of the present international forest regime including a discussion of the international legal instruments and institutions currently in place to determine the gaps, overlaps, uncertainties and opportunities that exist with a look to make the existing regime more effective.

Chapter fourteen and fifteen look at the management of coastal areas, the effects of pollution on both land and water, the need for an integrated approach to coastal zone management to produce sustainable development, and the importance of preserving the natural and cultural heritage in the Asian Pacific region. This requires cooperation between countries, UN organisations and regional organisations. The often emotional subject of land based marine pollution is discussed by Zander Zwaag who writes of a “Primal scream therapy”¹⁶ which is a “therapeutic treatment for professors, students, managers and others who venture to face the reality of international law governing the control of land based pollution/activities.”¹⁷

Various UN Conventions are discussed and critically analysed giving the reader the idea that more change is needed before these can be effective in attaining sustainable development.

Although the text does include an overview of some of the necessary terms of international law relating to environmental issues¹⁸ and an overview of the treaty making process, procedures, principles, and

¹⁶ At 210

¹⁷ At 210.

¹⁸ Including: What international law is, sources of international law, international custom, general principles of law, judicial decisions, international conventions, entry into force, domestic legal affect of a treaty, reservations and declarations, good faith, interpretation, amendment and revision.

rules on the interpretation of treaties, it should be noted that this is a brief overview only and for in depth discussions on these topics students/readers should consult a text which cover these in depth.

Overall the text in Chapters Sixteen to Twenty-four starts to look at the need to concentrate not on the extent of environmental damage already done, but on answering the problems and fixing the damage.

Though the text does not focus on who is responsible it is clear that it is time for collective responsibility to be taken to clean up the mess. It is suggested that, to negotiate a stronger multinational response a system of guardians who would be responsible legal representatives for the environment, should be introduced. Overall these chapters delve more into future innovations that could be implemented and form an important basis for discussion amongst students and academics.

Issues such as marine environmental law, trade and the environment, biodiversity law, the ozone layer and the financial sustainability of the ideas and innovations expressed contain a sound analysis of issues, implemented strategies and possible ideas for change that could not be found in any other current resource book.

The relatively new area of biodiversity law is discussed in Chapter Twenty and raises many issues previously unexplored in environmental law texts.

The ozone layer and the effects of its depletion are considered over two chapters, Twenty-one and Twenty-two, and the devotion of two chapters to this issue places added emphasis on the importance and pertinence of this area of international concern. It's a subject that once upon a time generated substantial reporting and interest though it seems to have been shelved as a problem too big to deal with in recent years. Writings by academics on the effects of the depletion in the ozone layer is a must read for everyone as it covers important issues about greenhouse gasses, global warming, water balance and more. It is a very confronting issue as every human being affects the environment and collectively we have done, and are still doing, a lot of harm to the earth.

Proposed solutions to environmental issues begs the question 'who will pay for it?' and Chapter Twenty-three provides some innovative solutions to the economic difficulties faced in funding environmental capacity building. The last chapter brings home the fact that solutions are no use unless someone can fund their effective implementation.

Any consideration of the future and what could possibly happen is bound to be confronting, however, the text is bold in its exploration of these issues. A strong undercurrent running throughout the text makes the reader consider the all too real possibilities of what changes could happen in the areas of population, consumption and resources; cultural diversity; national security; climate; environmental pollution; economics; institutions; technology; information and communication; and biological diversity if we continue in our current trend of wreaking irreversible and ongoing change to the environment. Every reader should keep in mind the question of what international law can do, and is doing, to influence changes towards the sustainable use of the planets resources, and consider the important, and in fact critical, role of every country in establishing an environment that is sustainable.

The philosophy of the text is perhaps summed up by the Preamble of the Earth Council Earth Charter quoted at page 961:¹⁹

“We stand at a critical moment in Earth’s history, a time when humanity must choose its future. As the world becomes increasingly interdependent and fragile, the future at once holds great peril and great promise. To move forward we must recognize that in the midst of a magnificent diversity of cultures and life forms we are one human family and one Earth community with a common destiny. We must join together to bring forth a sustainable global society founded on respect for nature, universal human rights, economic justice, and a culture of peace. Towards this end, it is imperative that we, the peoples of the Earth, declare our responsibility to one another, to the greater community of life, and to future generations.”

¹⁹ Preamble, The Earth Council, The Earth Charter, The Earth Charter Initiative, International Secretariat, March 2000, 961.

Overall both volumes take a comprehensive look at various aspects of environmental issues in great detail and in an excellent format and style. As it contains such a diverse range of case studies and information gathered from a wide range of contributors, it makes an essential resource for students, lawyers, government agencies, environmentalists and in fact anyone with an interest in environmental issues. The two volume set would be an asset especially to teachers as each chapter includes a set of learning objectives that can be utilised to assist in creating a structured program for students. Additionally, the availability of the text in CD Rom format essentially increases its flexibility, availability, affordability and value as a learning tool for students.

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