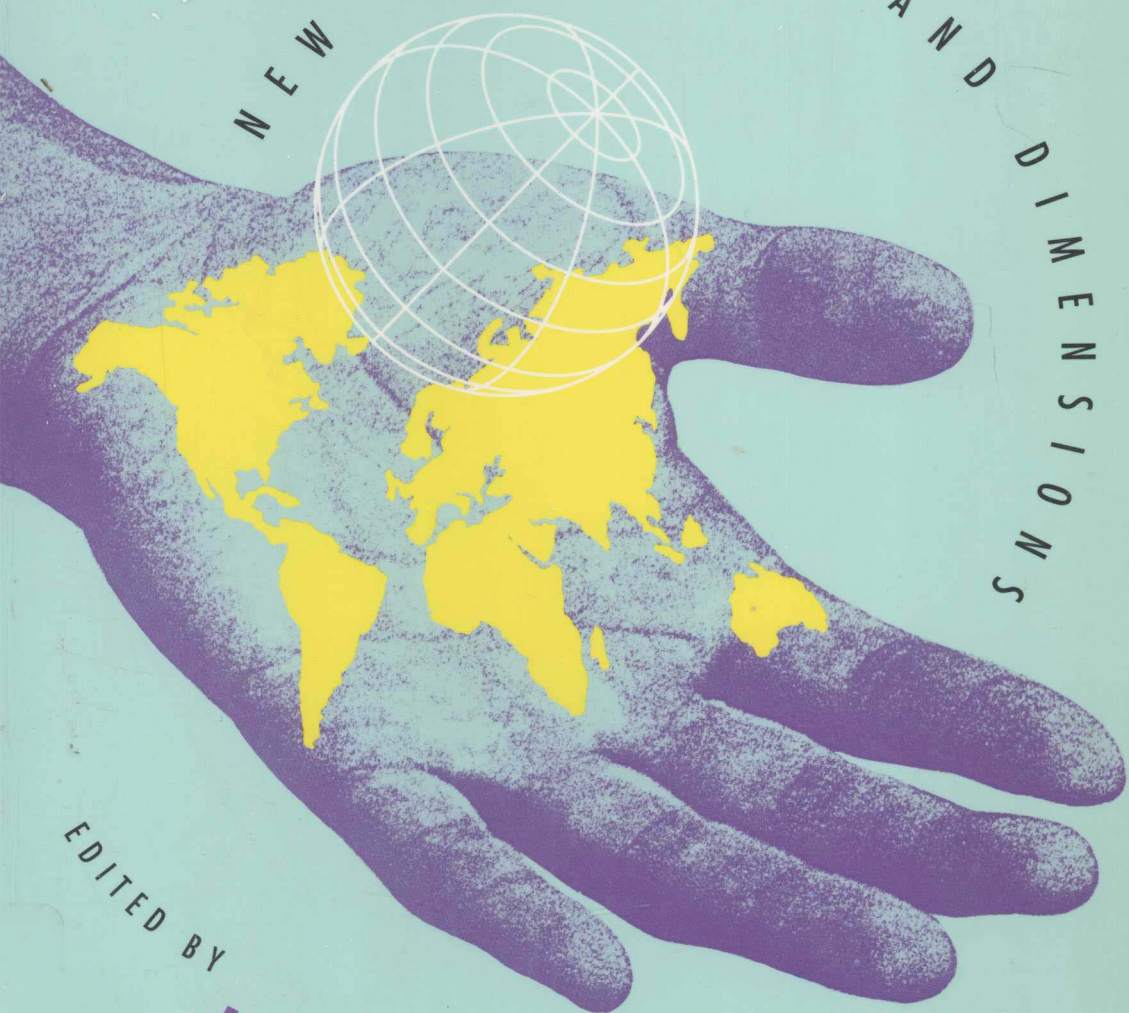


ENVIRONMENTAL CHANGE AND INTERNATIONAL LAW

NEW CHALLENGES AND
DIMENSIONS



EDITED BY

EDITH BROWN WEISS

Environmental change and international law: New challenges and dimensions

Edited by Edith Brown Weiss



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Note to the Reader from the UNU

The United Nations University's programme on Human Dimensions of Global Change recognizes that environmental changes have reached new levels of global complexity and that a need exists to cope more comprehensively with the human interactions that are helping to shape these changes. The objectives of the programme are: (1) to increase awareness of the complex dynamics governing human interaction with the Earth as a whole system; (2) to strengthen efforts to anticipate social change affecting the global environment; (3) to analyse policy options for dealing with global environmental change; and (4) to identify broad social strategies to prevent or mitigate undesirable impacts of global environmental change.

As part of this programme, the UNU's project on International Law and Global Change was undertaken to help further the development and application of international law in a changing global environment. The main objectives of the project are to assess the impact of environmental changes on international law, make proposals on how existing legal norms may be adapted to the changing conditions and what new ones are needed, as well as develop and analyse different possible scenarios and their likely impact.

This book addresses issues relating to the changing role of international law and includes topics such as the emerging principles of prevention and mitigation, the implementation of environmental law and the third world, risk assessment, international organizational restructuring, state responsibilities, and quality. Particular focus is given to the need to anticipate approaches to international law for the prevention of environmental harm and the role scientific information can play in establishing cross-national agreements.

This book is dedicated to the memory of
Edward Ploman

Edward Ploman, known to colleagues and friends as Eddi, served as the Vice-Rector of the Global Learning Division of the United Nations University from 1982 to 1986. He was keenly interested in global environmental issues and in the role that international law could play. At the time of his death, he was a member of the group contributing to this book. The draft of his contribution to the book is contained in appendix A.

Acknowledgements

This book was undertaken as a project of the United Nations University. I am extremely grateful to the United Nations University for its generous support and for its constant dedication to facilitating the scholarship of the authors.

The authors represent a broad cross-section of scholars and practitioners from various parts of the world. All of them have extensive experience with international environmental issues. They write solely in their individual capacities as scholars.

The group held two workshops to define and analyse the issues and to discuss the contents of the various chapters. Both were held at the International Court of Justice, the Hague. I am grateful to the Hague Academy of International Law for allowing us to use these facilities and for the gracious hospitality of the Academy and its staff.

During the course of preparing this book, the authors have received numerous comments on earlier drafts of the manuscripts from each other and from outside commentators. All of us express our deep gratitude to our colleagues for this valuable input.

I am especially grateful to Anna Paiewonsky, Steven Porter, Kathleen Haviland, and Robert McDade, students at the Georgetown University Law Center, for their assistance in this project, to the administrative staff of the Law Center for their excellent support, and to Ellen Schaefer, the International Law Librarian, for her untiring efforts to locate difficult references.

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Finally, I must express appreciation to Roland Fuchs and Dieter Koenig of the United Nations University for making this project possible.

List of abbreviations

- A.F.D.I. Annuaire française de droit international
A.J.I.L. American Journal of International Law
Am. U.L. Rev. American University Law Review
Ann. de l'Inst. de droit int'l Annuaire de l'Institut de droit international

C.F.R. Code of Federal Regulations (United States)
Ch. Env't'l Mgmt. Chinese Environmental Management
Ch. Leg. Sys. Nwspr. China Legal System Newspaper
Ch. Y.B. Int'l L. Chinese Yearbook of International Law

Den. J. Int'l L. & Pol'y Denver Journal of International Law and Policy

Ecol. L.Q. Ecology Law Quarterly
Env't J. The Environment Journal
Env't Rep. Environment Reporter (BNA)
Env't'l L. Environmental Law
Env't'l L. & Pol'y J. Environmental Law and Policy Journal
Env't'l Pol'y & L. Environmental Policy and Law
Euro. J. Int'l L. European Journal of International Law

F.2d. Federal Reporter Second Edition (United States)

List of Abbreviations

G.A. Res. United Nations General Assembly Resolution
Gaz. St. Cnc'l Peo. Rep. Ch. Gazette of the State Council of the
 People's Republic of China
Geo. Int'l Env't'l L. Rev. Georgetown International Environmen-
 tal Law Review

Harv. H.R.Y.B. Harvard Human Rights Yearbook
Harv. Int'l L.J. Harvard International Law Journal
Harv. L. Rev. Harvard Law Review
Hou. J. Int'l L. Houston Journal of International Law
H.R.L.J. Human Rights Law Journal
H.R.Q. Human Rights Quarterly

I.C.J. International Court of Justice Reports
I.L.M. International Legal Materials
I.L.R. International Law Reports
Ind. J. Int'l L. Indian Journal of International Law
Int'l & Compar. L.Q. International and Comparative Law Quar-
 terly
Int'l Env't Rep. International Environment Reporter
Int'l Hrl'd. Trib. International Herald Tribune
Int'l J. International Journal
Int'l J. Refugee L. International Journal of Refugee Law
Int'l L. & Politics International Law and Politics
Int'l Prot. Env't International Protection of the Environment
Int'l Soc. Sci. J. International Social Science Journal

Mich. J. Int'l L. Michigan Journal of International Law

Neth. Int'l L. Rev. Netherlands International Law Review
N.Y. Times New York Times
N.Y.U.J. Int'l L. & Pol'y New York University Journal of Inter-
 national Law and Policy

O.J. Eur. Comm. Official Journal of the European Communities
Österch. Ztshrft. für öffntlchs. Recht und Vlkrcht. Österreichische
 Zeitschrift für öffentliches Recht und Völkerrecht

Pace Env't'l L. Rev. Pace Environmental Law Review
Phil. & Pub. Aff. Philosophy and Public Affairs

Prologue: J. Am. Archvs. Prologue: The Journal of the American Archives

R. Int'l Arb. Awards United Nations Reports of International Arbitral Awards

R.R. Renmin Ribao (People's Daily, China)

R. 3rd For. Rel. L. U.S. Restatement Third of the Foreign Relations Law of the United States

Rec. des cours de l'Ac. de droit int'l Recueil des cours de l'Academie de droit international

Rev. des droits de l'hom. Revue des droits de l'homme

Rev. Gen. de Droit Int. Public Revue Generale de Droit International Public

Rivista. Giur. dell'Amb. Rivista Giuridica dell'Ambiente

Rutgers L. Rev. Rutgers Law Review

S.D.L. Rev. South Dakota Law Review

So. Afr. J. Hum. Rts. South African Journal of Human Rights

Soc. Theory & Prac. Social Theory and Practice

Stat. United States Statutes at Large

Tex. Int'l L. J. Texas International Law Journal

T.I.A.S. United States Treaties and Other International Acts Series

Tn. L. Rev. Tennessee Law Review

T.S. Treaty Series

U.N. GAOR United Nations General Assembly Official Record

U.N.Y.B. United Nations Year Book

U.S.C. United States Code

U.S.T. United States Treaties

U.S.T.S. United States Treaty Series

Va. J. Int'l L. Virginia Journal of International Law

Verfsg. und Rcht. in Übersee Verfassung und Recht in Übersee

X. Gen. Oseas. Nws. Svc. Xiahua General Overseas News Service

Y.B. Int'l L. Comm'n Yearbook of the International Law Commission

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Introduction

1

Global environmental change and international law: The introductory framework

Edith Brown Weiss

International law has been based on the relationship between independent states that exercise exclusive national sovereignty over their territories. Global change is altering this vision by causing states to realize that they are locked together in sharing the use of a common global environment. While human activities have always contributed to environmental change, it is only within the last half of this century that their effects have become global and serious, and in many cases irreversible. This has led to a growing awareness that the interests of humankind must constrain the interests of individual states. Moreover, actors other than states have become essential to managing global environmental change. These developments are leading to a fundamental shift in the paradigm of international law that is evolving in the international environmental field. This book examines some of the ways in which international environmental law is responding to global environmental change and suggests new directions for the field.

I. Trends in global environmental change

Concern among primarily industrialized countries about the serious risk of environmental harm to countries around the world motivated

The author thanks Steven Porter for his assistance, particularly with the chapter summaries.