

**Yearbook
of
International Environmental
Law**

Volume 1

1990

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Documents

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Literature Review

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List of Abbreviations

AJCL	American Journal of Comparative Law
AJIL	American Journal of International Law
ALI	American Law Institute
ArizLR	Arizona Law Review
AmUJILP	American University Journal of International Law and Policy
AVR	Archiv des Völkerrechts
Benelux	Belgium, The Netherlands and Luxembourg
BNA	Bureau of National Affairs (Washington, D.C.)
BostCEALR	Boston College Environmental Affairs Law Review
BusLawyer	The Business Lawyer
CaseWRJIL	Case Western Reserve Journal of International Law (Cleveland, Ohio)
CaWILJ	California Western International Law Journal
CE	Council of Europe
CEPA	Canadian Environmental Protection Act
CERN	European Organization for Nuclear Research
CFCs	chlorofluorocarbons
CITES	Convention on International Trade in Endangered Species of Wild Fauna and Flora
Clunet	Journal du Droit International
CMLR	Common Market Law Reports
CMLRev	Common Market Law Review
CoaMgt	Coastal Management: An International Journal of Marine Environment, Resources, Law and Society
CoJIELP	Colorado Journal of International Environmental Law and Policy
ColumbJEL	Columbia Journal of Environmental Law
ColumbJTransL	Columbia Journal of Transnational Law
CRAMRA	Convention on the Regulation of Antarctic Mineral Resource Activities
DenvJILP	Denver Journal of International Law and Policy
DickJIL	Dickinson Journal of International Law
DukeLJ	Duke Law Journal
ECA	United Nations Economic Commission for Africa
ECE	United Nations Economic Commission for Europe
ECLAC	United Nations Economic Commission for Latin America and the Caribbean

EC	European Community
ELQ	Ecology Law Quarterly
ENEA	European Nuclear Energy Agency
Envist	The Environmentalist
EnvL	Environmental Law
Envt	Environment (Washington D.C.)
EPA	Environmental Protection Agency (USA)
EnvPlanLJ	Environmental and Planning Law Journal (Australia)
ESCAP	United Nations Economic and Social Commission on Asia and the Pacific
ETS	European Treaties Series
EuJIL	European Journal of International Law
EurLR	European Law Review
EurTL	European Transport Law
FAO	United Nations Food and Agriculture Organization
FletchF	The Fletcher Forum
FOEI	Friends of the Earth International
GATT	General Agreement on Tariffs and Trade
GEMS	Global Environmental Monitoring Service
GMOs	Genetically Modified Organisms
Harvard ELR	Harvard Environmental Law Review
Harvard ILJ	Harvard International Law Journal
HR	Hosei Ronshu (Journal of Law and Political Science, Nagoya University, Japan)
IAEA	International Atomic Energy Agency
ICJ	International Court of Justice
ICLQ	International and Comparative Law Quarterly
IEAff	International Environmental Affairs (Dartmouth College)
IER	International Environment Reporter (BNA, Washington, D.C.)
IFAD	International Fund for Agricultural Development
IGO	intergovernmental organization
IIASA	International Institute for Applied Systems Analysis
IJECL	International Journal of Estuarine and Coastal Law
ILA	International Law Association
ILC	International Law Commission
ILM	International Legal Materials
ILO	International Labor Organization
ILQ	International Law Quarterly
ILR	International Law Reports
IMF	International Monetary Fund
IMO	International Maritime Organization
Indian JIL	Indian Journal of International Law
INTELSAT	International Telecommunications Satellite Consortium

Int'l Quart	International Quarterly
IRPTC	International Register of Potentially Toxic Chemicals
IUCN	International Union for the Conservation of Nature and Natural Resources
JEnvL	Journal of Environmental Law (Oxford)
JLandUEL	Journal of Land Use and Environmental Law (Florida State University College of Law)
JusVerk	Justitiele Verkenningen (The Netherlands)
KSH	Kokusai Shoji Homu (Journal of the Japanese Institute of International Business Law, Tokyo)
LBMP	land-based marine pollution
LDC	London Dumping Convention
LILR	Lloyd's Law Reports
LlMarCommLQ	Lloyd's Maritime and Commercial Law Quarterly
LandMELR	Land Management and Environmental Law Report (Sussex UK)
LoyICLJ	Loyola of Los Angeles International and Comparative Law Journal
MARPOL	International Convention for the Prevention of Pollution from Ships
McGLJ	McGill Law Journal
MdJILT	Maryland Journal of International Law and Trade
Med (Protocol)	Mediterranean Protocol on Land-based Marine Pollution
MP	Marine Policy
N+R	Natur und Recht (Germany)
NEA	Nuclear Energy Agency (OECD)
NEPA	National Environmental Policy Act (USA)
NGO	non-governmental organization
NILR	The Netherlands International Law Review
NResEnv	Natural Resources & the Environment
NRJ	Natural Resources Journal
NSKK	Nippon Seikyo Kenkyusho-Kiyo (Institute for the Study of Politics, Tokyo)
NucLBull	Nuclear Law Bulletin
NZfV	Neue Zeitschrift für Verwaltungsrecht (Germany)
O&SM	Ocean and Shoreline Management
OAS	Organization of American States
OAU	Organization of African Unity
ODILJ	Ocean Development and International Law Journal
OECD	Organisation for Economic Co-operation and Development
PacBLJ	UCLA Pacific Basin Law Journal
PaceELR	Pace Environmental Law Review (USA)
P.L.	Public Law

PPP	polluter pays principle
QueenLSJ	Queensland Law Society Journal
RdC	Recueil des Cours (Hague Academy of Law)
RDIP	Revue de Droit International Public
RivDirInt	Rivista di Diritto Internazionale
RG Ambiente	Rivista Giuridica dell'Ambiente
RJE	Revue Juridique de l'Environnement
SC	Security Council
SDR	special drawing right
SollULJ	Southern Illinois University Law Journal
TMA	Tijdschrift voor Milieu Aansprakelijkheid (Environmental Liability Law Review, Netherlands)
Texas ILJ	Texas International Law Journal
TIAS	Treaties and Other International Acts Series (USA)
TMil&R	Tijdschrift voor Milieu & Recht (The Netherlands)
TNC	transnational corporation
TennLR	Tennessee Law Review (USA)
UN	United Nations
UNGA	United Nations General Assembly
UNCITRAL	United Nations Commission on Trade and Development
UNCLOS	United Nations Conference on the Law of the Sea
UNCTAD	United Nations Conference on Trade and Development
UNDP	United Nations Development Programme
UNEP	United Nations Environment Programme
UNESCO	United Nations Educational, Scientific, and Cultural Organization
UNITAR	United Nations Institute for Training and Research
UNRIAA	United Nations Reports of International Arbitral Awards
UNTS	United Nations Treaty Series
WHO	World Health Organization
WMO	World Meteorological Organization
WORLD BANK	International Bank for Reconstruction and Development
WRI	World Resources Institute
YaleJIL	Yale Journal of International Law
YUH	Yuhikaku (Jurist, Tokyo)
ZaöRV	Zeitschrift für ausländisches öffentliches Recht und Völkerrecht
ZUPUR	Zeitschrift für Umweltpolitik & Umweltrecht

Foreword

The field of international environmental law is expanding almost as rapidly as our awareness of the inextricably interlinked global environmental problems which now confront all nations. From global warming and ozone depletion, to deforestation, soil erosion and reductions in the quality and quantity of potable water, the world today faces problems which simply cannot be solved by domestic action or law alone. We have polluted and degraded our natural environment to the point where only concerted national, regional and global action can redress the damage; inasmuch as no one nation or group of nations can successfully act to repair or reverse the environmental destruction we have wrought, only a global partnership of all nations can succeed.

Internationally, environmental law is moving from a definition-oriented to a solution-oriented stage. The task, however, is complex. The 1980s will probably be remembered as the decade where, for the first time, peoples and governments took the threats facing the global environment seriously; the real challenge for the 1990s will be to match the rhetoric of the 1980s with action. While some steps have already been taken along this path towards effective action with, notably, the Basel Convention on the Transboundary Movement of Hazardous Wastes and its Disposal, and the Convention on the Protection of the Ozone Layer and its Montreal Protocol, the growing number and increasing importance of international environmental treaties requires that we focus our attention on the more difficult questions of implementation, verification and compliance with the various treaty provisions, as well as on the resolution of disputes over environmental issues.

Finding answers to these questions will necessarily involve substantial changes in current economic and political assumptions. The rationale behind environmental accounting must, for instance, be accepted internationally, otherwise developing nations will be forced to continue to plunder their resource capital rather than using the interest to develop sustainable economic activities. The world needs the development of mechanisms which provide additional financial resources to allow developing countries to break the cycle of debt, environmental degradation and exacerbated poverty. It also needs clearly defined international measures which will facilitate the transfer of environmentally benign technologies to developing nations to allow them not only to bypass older polluting technologies, but to set their feet firmly on the path towards sustainable development.

There is growing acceptance that it is not possible to implement international treaties without cooperation between the industrialized and the developing worlds. Indeed, it is heartening to see that this acceptance is beginning to be put into practice, both with the establishment of the Multilateral Fund of the Mon-

treational Protocol and with the moves towards the creation of a global environmental facility.

However, to put any of the fine words spoken during the 1980s into practice will require a great deal of work from those involved in international environmental law. For this reason, the publication of the *Yearbook of International Environmental Law* is both welcome and timely. Whether in the scientific, legal, political or public domains, the sharing and dissemination of information is a crucial factor in the repair and restoration of the environment. The *Yearbook*, a multinational and cooperative effort, offers further hope that the world community of nations can work together to define and actualize the remedial steps necessary for the preservation of this planet – our home – for future generations.

Dr. Mostafa K. Tolba
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Editorial Statement

Over the last few years, as awareness of and concern about the global environment have intensified, evolving international environmental policy and law have become the focus of increased attention by scholars, legal practitioners and governmental as well as non-governmental decision-makers. Although several specialized journals and “news” services have emerged in response to this phenomenon, none of them offers a systematic, across-the-board analysis of developments in this rapidly expanding new discipline of “international environmental law”. The *Yearbook* seeks to close this gap by providing an authoritative as well as comprehensive review of internationally significant legal developments, in a format that makes information easily accessible. While the focus is on legal developments proper, the scope of coverage provided reflects a broad definition of “law” and the legal process.

From the very beginning, the *Yearbook* was conceptualized as having as its centerpiece the “Year-in-Review” section, featuring short reports written by recognized international experts that summarize year-by-year trends in discreet subject areas that represent the whole spectrum of international environmental legal issues. Additionally, internationally significant legal developments in key countries or regions (including domestic legal changes of potential transnational interest) and international governmental as well as non-governmental organizations are being reviewed. The section features also “special reports” which, though topical, focus also on developments preceding the calendar year under review, or do not meet the more concise and, generally, less evaluative format of regular reports.

Individuals were invited to serve as reporters on the basis of their reputation as experts on the respective topics. This is true also of our reporters on international organizations many of which had to be recruited from within the organizations concerned to ensure accurate and up-to-date coverage of the organization’s activities. Notwithstanding the close involvement of some reporters in the very developments they are called upon to analyze, the editors are confident that none of the reports reflect undue institutional bias. Subjective value judgments are, of course, intrinsic to any such analysis, be that in the choice of the events deemed noteworthy, be that in the presentation of the issues concerned. In any event, given the fact that most issues are addressed in overlapping fashion by two or more keyword entries, the reader will be able to compensate for any bias in individual reports.

By contrast, the editors made a conscious decision to invite non-governmental environmental organizations, *qua* organizations, to report on their activities as they bear on the making and application of international environmental law. We think that this decision to provide NGOs with a platform for highlighting their

own accomplishments is justified in light of the important work that these organizations carry on and the frequently limited publicity such efforts are being given.

On the whole, editorial changes have been kept to a minimum. The reports thus reflect the respective authors' idiosyncratic style and view of what constitute the most important legal developments during 1990.

Identification of proper key words and establishment of a reliable world-wide reporter system proved to be a most challenging task. As in any such ambitious undertaking, last minute glitches do occur and the editors regret that it was not always possible to feature reports for all of the listed key words. We are confident, however, that we will do better in next year's volume. Volume 2 will also provide expanded coverage of countries and regions. The present volume justifiably reflects a strong public law bias. In 1991, however, the "Year-in-Review" will cover also implications for private business of the changing international environmental legal framework. In general, as new issues emerge and other topics might warrant more extensive treatment, additional entries may be added to the present list.

The *Yearbook's* other documentary features include a bibliography of books and major articles that is organized roughly along the subject-matter headings used in the "Year-in-Review" section, as well as a legal documents section. Needless to say, limitations of space made it impossible to print all the documents which might have been worthy of publication because of their significance to the development and codification of international environmental law. Although the editors decided early on not to include mere draft documents, difficult choice problems could not be avoided altogether. It is with great satisfaction, therefore, that we can report that Volume 2 will have a greatly expanded documents section. While the number of pages allocated to documents will remain the same, the publishers have agreed to supplement these pages with an electronic storage medium. Thus, next year's *Yearbook* package will include a computer diskette which should allow us to reproduce all essential international environmental legal documents without significant impact on the *Yearbook's* price.

The *Yearbook* intends to publish two or three theoretical articles per volume. The editors thus welcome submissions of manuscripts that provide critical assessment of institutional and substantive international legal responses to global change and the need for more effective international management of environmental resources.

Finally, a word on the relationship between the period covered by the *Yearbook* and the date of its publication: The need for setting a cut-off date for late developing events that would not prejudice publication of the *Yearbook* early in the new year presented some difficulty. For Volume 1, we compromised on December 1, 1990 as the cut-off-date for "Year-in-Review" reports and documents; and November 15, 1990 for bibliographical entries. Due to some changes in the production schedule for Volume 2, we will be able to cover developments

during the full calendar year of 1991 without having to abandon the goal of publishing the *Yearbook* in the first trimester of the following year. Volume 2 will also reflect late 1990 developments in the law or legal literature that could not be taken into account in Volume 1 because of the cut-off dates.

On a further technical note, we would like to emphasize that the publishers are making arrangements for the free-of-charge transfer of publication and distribution rights to publishers in, principally, Third World countries. This should ensure the availability of the *Yearbook* in those countries at a price that is locally affordable. We thereby hope to reach our goal of attracting a truly global readership for the *Yearbook*.

The editors wish to express their gratitude to all those directly involved in the *Yearbook* project, especially, however, the reporters without whose selfless input this unique documentation would not have been possible. Special thanks are also due to David Caron and Nicholas Robinson who invested much time and energy in helping refine the *Yearbook* concept and identify and enlist reporters for the "Year-in-Review" section; to Mary Eilers and Lorraine Lorenger at Wayne State Law School for processing the manuscripts; and last but not least to Barbara Schreibman and Gary Supanich for their invaluable editorial assistance.

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