

INTERNATIONAL LAW AND THE ENVIRONMENT by
Patricia W Birnie and Alan E Boyle, Oxford, Clarendon
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International environmental law has been one of the most rapidly expanding areas of international law in the past decade. Originally an area of international law which grew from basic principles of state responsibility adopted in cases such as the *Trail Smelter Arbitration*, the international protection of the environment has now become dominated by global multilateral conventions. In 1992, in preparation for the 1992 United Nations Conference on Environment and Development (UNCED), some 124 such conventions were identified as dealing with the international protection of the environment. Since the UNCED conference this number has continued to grow. Not only has this development of international environmental law had an international impact, but in Australia its domestic impact has also been felt. The various disputes over the listing of properties under the 1972 UNESCO Convention for the Protection of the World Cultural and Natural Heritage demonstrated the potential for international environmental conventions to have an impact upon Australia. Likewise, international concerns as represented by the 1985 Vienna Convention for the Protection of the Ozone Layer and the subsequent 1987 Montreal Protocol have resulted in domestic action to reduce the use of CFCs (chlorofluorocarbons) and other ozone depleting gasses. As a result, many Australian homes now have refrigerators which are CFC free.

These examples demonstrate that international environmental law has begun to have a wide international and domestic impact. However, despite its significance there has until recently been a dearth of quality books dealing with the subject. For this reason alone, the publication of Birnie and Boyle is to be welcomed. It covers a major gap which had begun to develop in both the international law and environmental law literature. That said, this publication sets a high standard for others that may follow. It provides a comprehensive coverage of international environmental law issues ranging from a consideration of basic principles and how they have historically developed, to a sectoral analysis of the legal regimes which exist in major areas of international environmental concern. Since publication in 1992 there have been a number of major developments in international environmental law. The UNCED process resulted in the adoption of the Rio Declaration on the environment, new conventions were agreed upon dealing with climate change and biodiversity, principles dealing with protection of the world's forests were adopted, as was Agenda 21 which details environmental issues to be grappled with during the remainder of this decade and beyond 2000. Despite not discussing these developments in any major detail, the worth of this book is undiminished. If anything, these developments only strengthen the conclusions reached concerning the development of international environmental law principles.

Birnie and Boyle open with the question "What is International Environmental Law?". This question is posed because not only is the subject one which until the early 1970s was not deemed to exist, but also because prominent international lawyers still maintain the view that international environmental law is merely a collection of principles concerning state responsibility and international instruments dealing with specific sectoral and regional envi-

ronmental problems. Perhaps wisely, the authors do not engage in serious debate with the detractors, making the point that for the purposes of their study they use the term International Environmental Law in the same way that others use the terms "Law of the Sea", "Human Rights" and "International Economic Law", "without intending thereby to indicate the existence of a new discipline based exclusively on environmental perspectives and strategies" (p1).

Despite not expressly taking to task those who doubt the validity of their study, Birnie and Boyle nevertheless construct a strong argument against the views of the doubters. Notwithstanding concerns over effective implementation and compliance, the authors, through their review of both customary rules and a multitude of conventions, present convincing evidence that there does exist a discrete body of international law which can legitimately be called international environmental law. As they proclaim in their concluding chapter

Although evaluation of the precise character of existing customary rules, and even more so of general principles of law from which it is permissible to draw inferences, is not without difficulty, and is in the final analysis a matter of judgement ... there is today rather more evidence for the existence of customary rules ... than sceptics have in the past suggested. Certainly, there is no doubt that the content of customary international environmental law today is much less modest than was true in 1972 (p544).

The work is divided into two main sections. Chapters 1-5 deal with basic principles of international environmental law as developed through custom, decisions, and conventions. Chapters 6-13 then deal with specific sectoral approaches to protecting the international environment before some conclusions are reached in Chapter 14. The emphasis in developing a strong foundation for this work in customary international law, decisions of tribunals and courts, and relevant principles from conventions, is one of the book's strengths. As if in recognition that some readers may not be trained in international law, Chapters 1 and 2 deal with sources of international environmental law and international organisations and bodies which are responsible for the formulation of environmental law and policy. The focus then changes to an identification of basic principles of state responsibility for the protection of the environment. Much attention is given to the 1972 Stockholm Declaration on the Human Environment, and the effect of Principle 21 upon the development of international environmental law principles. Consideration is also given in Chapter 4 to the role of international institutions in the management of international environmental laws and to methods of dispute settlement. Chapter 5 seeks to place the international law in a domestic or human context with reference to generational rights for the protection of the environment, animal rights and "eco-rights".

Chapters 6-13 then follow with a sectoral analysis of international environmental law as it applies in certain specific issue areas. Topics chosen include: pollution of international watercourses, the law of the sea and regulation of marine pollution, international control of hazardous waste, nuclear energy and the environment, protection of the atmosphere and outer space, principles and problems of conservation and sustainable use of living resources, regimes for the conservation of migratory and endangered land-based species, and the conservation of marine living resources. No real attempt is made to justify the choice of these specific areas for detailed study. For example why was pollution of international watercourses preferred over a study reviewing protection of

world heritage sites and significant ecosystems such as Antarctica? However, this is a minor complaint. The main purpose of this work is not to deal with specific environmental protection regimes, but rather to deal with protection of the environment as a whole. As a result there is little detailed consideration given to the workings of specific international conventions; the emphasis instead being on the general principles these conventions create and the global framework of international environmental law which has resulted from these developments. This work then will not satisfy the specialist who seeks a detailed study of international environmental law conventions. On its own this would be a large undertaking and there already exist a number of excellent studies dealing with international environmental law regimes from a sectoral perspective. By not specialising or even concentrating on various case studies, Birnie and Boyle succeed in providing an overview of an area in international law which to date has too often been analysed from the perspective of specific conventions applying in narrow issue areas.

In conclusion then, Birnie and Boyle is thoroughly recommended for both the student and practitioner. It will also be a valuable text for tertiary courses which are emerging in this area. It represents a concise, well written and original treatment of the subject which is likely to become the standard. While its coverage of certain sectoral areas may be overtaken by the ever increasing number of international instruments being negotiated on environmental protection, it has the potential to stand the test of time because of its emphasis on basic principles of international environmental law.

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