NATURAL RESOURCES JOURNAL

Volume 43
Issue 2 *Spring 2003*

Spring 2003

International Law and the Environment: Variations on a Theme, by Tuomas Kuokkanen

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whether the populations and habitats on the property are contiguous with larger ones or isolated; the potential species and habitats; the actual species and habitats, including diversity, distribution, and abundance; and the carrying capacity and non-habitat factors like predators, prey, competitors, and disease-causing organisms. The open political economy question is whether the agricultural community would or could open up their value assessment surveys to include questions aimed at bio-assessment.

Healthy local control through collaboration in exchange for stricter accountability is a trade-off many westerners might make. More formal bio-economic markets for better natural resource conservation is not a pie-in-the-sky idea. Such a market would complement or replace already existing programs that use a bilateral negotiation landowner-by-landowner approach. The search for who and how to control western natural resources on public and private lands requires that we use the best tool for the task at hand. There is no universally preferred tool. Sometimes consensus works, but other times compensation through explicit bioeconomic markets can work better, especially when voluntary actions and privacy are issues. You might not want to go this far, but as the prominent PBS commentator Bill Moyers recently pointed out, "If you want to fight for the environment, don't hug a tree; hug an economist."

REVIEWS

International Law and the Environment: Variations on a Theme. By Tuomas Kuokkanen. The Hague: Kluwer Law International, 2002. Pp. xxxiii, 412, Index. $124.00 hardcover.

International law has over the last century or so struggled with issues relating to the protection of the environment and the utilization of natural resources, seeking to develop functional methods and techniques to solve various problems that have arisen in these fields. Although the efforts of countries and international institutions in the law-making arena have been continual, the solutions have not always been prompt and easy, in particular for two reasons. First, due to the nature of international law itself, which, as a dynamic institution, is subjected to perennial change. Second, due to the subject matter—environment—itself, which, because of its inherently transcendent nature, triggers continually renewed demand for change of regime. The rapid scientific and technological development continues to further delay resolutions on the matter. Indeed there is little reason for doubt that the planet is undergoing significant change of environment that requires continuous regime adjustments. Also consequently, environmental law has become

a matter of such fundamental importance that every international lawyer should have at least a passing familiarity with the subject. In this context therefore, the book *International Law and the Environment: Variations on a Theme*, by Dr. Tuomas Kuokkanen, is a welcome endeavor that fills in a much needed gap to facilitate the understanding of the evolutionary feature of international law in a broadened environmental context.

Although the book examines the evolution of international environmental law, it is not an historical study because the legal doctrines discussed are still current and relevant. The methodology followed by the book, which applies historiographical technique such as periodization, helps to better understand the evolution. Dr. Kuokkanen divides the relationship between international law and the environment into three epistemological categories, defined from both a chronological and a substantive viewpoint to indicate particular time periods during which particular doctrines dominated. In effect, the three categories represent three different paradigms in which international environmental law can be placed. Instead of labeling them arbitrarily, Dr. Kuokkanen seeks to apply generally accepted historiographical concepts: traditional, modern, and postmodern era—the three eras in time being the traditional period (from 1850 to 1939), the modern era (between 1950 and 1980), and the post modern period (1980 onwards).

The above separation appears methodologically perfect. From a substantive viewpoint, the traditional era represents a period during which classical methods and techniques of international law were applied. The modern era refers to the doctrinal development of international environmental law and the law of natural resources. Finally, the postmodern period relates to environmental integration and sustainable development. The use of the concept of postmodern era (rather than late modern era) certainly underscores the different types of materials that are involved in two different discursive contexts—modern and postmodern.

Applying the above three historiographical periods, defined substantively, the book seeks to arrange environmental legal materials in a clear and concise fashion. In particular, it attempts to clarify the tension between the protection of the environment and the exploitation of natural resources. Indeed, the relationship between international law and the environment can be seen as variations in that tension during different periods, a perfect and logical justification to explain the subtitle given to the book. Interestingly, while during the traditional period there was no clear distinction between the two, during the modern era they were almost completely separated.

Dr. Kuokkanen's book is made up of three distinct chapters, each one self-standing in itself, yet perfectly complementary to each other.

Chapter I deals with the traditional era during which period issues relating to the protection of the environment and exploitation of natural resources were undifferentiated both between each other and in relation to general international law. The chapter begins with an interesting discussion of the doctrine of absolute sovereignty (commonly referred to as the Harmon Doctrine), emanating from a legal opinion by Judson Harmon, Attorney General of the United States, on the use of the waters of the Rio Grande. The detailed discussion of this doctrine, which later became significantly controversial amongst scholars of international water law, is well merited as it helps the readers to understand the level of ramifications in international law. Also because it is followed and complemented by description of treaties that were affected either positively or negatively by the application of the Harmon doctrine (as between the United States and Mexico and as between the United States and Canada), the assessment of the merits and demerits of the doctrine becomes easy and leads to comfortably affirming the indeterminacy of the doctrine of absolute sovereignty.

The chapter then discusses the different approaches taken by countries in separating jurisdiction from substance, the usefulness of the doctrine of abuse of rights and that of the rules regarding state responsibility, the merits of the recognition of states' rights to use its natural resources and the benefits of arbitration in settling international disputes related to environment. The discussions are comprehensive in nature, as they are also exemplified by commentaries on related international cases and arbitration awards.

Chapter II explores the modern approach to environmental protection and the controversy between the traditional and modern approaches to the exploitation of natural resources. The first part of Chapter II examines the development of the process of internationalization by distinguishing between the object, purpose, and scope of its development. The process is divided into three regulatory phases by applying these concepts: regulations on the use of boundary waters in order to avoid disputes, regulations on the exploitation of useful species in areas beyond national jurisdiction, and regulations on the protection of the environment in a transboundary context. A shift from the traditional to the modern approach, Dr. Kuokkanen confirms, entailed a move from an application of general international law to a substance-oriented approach. Also the modern approach, the book shows, culminated in the establishment of several international environmental protection organizations.

The latter part of this chapter gets into the economic aspects that prevailed in the evolution of the environmental regime along with the discussion of the nature of confrontation between the industrialized and non-industrialized countries about the associated regime-building. It

discusses the traditional doctrine on the protection of foreign property and the modern process of nationalization of the law relating to natural resources, which began to develop as a reaction against traditional doctrine. The discussions of the several cases, the modern law of natural resources attempting to ensure permanent sovereignty over natural resources, the problems of applicability of law, or the lack of remedy—all illustrating a confused status of international law—have led the author to stress, justly, the need for a well articulated, legally manageable approach.

Finally, Chapter III deals with the postmodern era, which strives to bridge the gap between man and nature on one hand and between the environment and the economy on the other by having recourse to technical expertise, environmental integration, and the balancing of economic interests and environmental concerns. The first part of the chapter explores the integration of scientific expertise into environmental policy. The shift entailed a move from reaction to anticipation and from problem solving to risk-management. As opposed to a static approach, dynamic regime building emerged. Moreover, the postmodern process revealed a hidden tension in the modern approach regarding the relationship between man and nature, a relationship that has always faced difficulty insofar as regime building is concerned. Nonetheless, the tensions were minimized, especially because, fortunately, there was already in place a limited body of law at the international level specifically addressing the problems of environment attempting to regulate such relationships in a relatively acceptable fashion, although adjustments and improvements continued to be necessary.

As important, Dr. Kuokkanen does not seek to present one approach to international environmental law but rather three different—classical, modern and postmodern—approaches. These three approaches reflect different undertakings of the relationship between international law and the environment. Also, in an elaborate fashion, Dr. Kuokkanen succeeds in illustrating that the postmodern period served as a healing process to help modernism work through its difficulties. Indeed, instead of proceeding to an uncertain future, the postmodern era had to backtrack to modernism and bridge the gaps between the biosphere and the technosphere and the environment and the economy. In this sense, the postmodern era, according to the author, represents not so much a new age, but rather, a renewal of modernity.

As for the general question prevalent amidst modern scholarship, to what extent is international environmental law different from "general" international law or international law in general? or to what extent does its development reflect that of general international law? Dr. Kuokkanen considers such a question, in itself, misplaced. And rightly so; such a question suggests, or presumes, that there exists an

uncontroversial body of "general" international law or international law in general. The legitimacy of such a presumption has been questioned already by many scholars of international law. There appears to be no such uncontroversial, or settled, context of all contexts or "outside-background" to which different international law contexts, including that of international environmental law, could be compared. Indeed, general international law, or the question of international law in general, has to be explored, according to the author, in its own context. Given the inherently controversial and problematic nature of international law in general, any attempt to presume its contents would remain metaphysical or, at the most, political.

Dr. Kuokkanen's attempt, throughout the book, to place the relationship between international law and the environment into a substantive and a historiographical context has served a real purpose, that of building a missing link between theoreticians and practitioners, and through that a better understanding of international environmental law. Also, because it seeks to demonstrate the different roles international lawyers dealing with environmental issues can play, the book is certain to become a very useful tool for them. In clear and straightforward language, Dr. Kuokkanen takes the reader through the breadth of complex and multifaceted considerations and labyrinths of international environmental law. His book is, no doubt, a leading and most comprehensive commentary on international environmental law and, as such, an entry for novices as well as experts into an increasingly important but all too often misunderstood field of international law. Combining both preciseness and academic excellence, along with an impressive bibliography, Dr. Kuokkanen has produced a high quality work. His book should find its own distinct place on the bookshelves of international law practitioners and academics alike.

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Fire, Native Peoples, and the Natural Landscape. Edited by Thomas Vale. Washington, DC: Island Press, 2002. Pp. 315. $50.00 cloth; $25.00 paper.

In *Fire, Native Peoples, and the Natural Landscape,* noted geographer Thomas Vale presents a collection of work challenging the concept of humanized landscapes. A series of seven articles, written almost wholly by geographers, examines the physical and historical evidence of whether or not native peoples of the western United States changed the landscape through setting fires for hunting and agricultural