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International Environmental Law & Policy

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REVIEWED BY GEORGE W. PRING*

NANDA, VED P., *INTERNATIONAL ENVIRONMENTAL LAW & POLICY*; Transnational Publishers, Inc., Irvington-on-Hudson, N.Y. (1995); (\$95.00); ISBN 0-941320-59-6; 458 pp. (hardcover).

A few friends, and many books,

both true,

Both wise, and both delightful too!

Abraham Cowley, "The Wish"

It is delightful to witness the meteoric growth of international environmental law in this decade, ¹and especially to welcome a new treatise in the field from an esteemed colleague which is both true and wise. Professor Ved P. Nanda's *International Environmental Law & Policy* is a definitive reference which will be appreciated by experts in the field as well as an excellent survey for those being introduced to it for the first time.

The book has been eagerly awaited. The author is the Thompson G. Marsh Professor of Law, Director of the International Legal Studies Program, and Vice Provost for Internationalization at the University of Denver, ²and has been a scholar and teacher in the field of interna-

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1. See discussion in George W. Pring & David Joeris, *Book Review: Various International Environmental Law Collections*, 4 COLO. J. OF INT'L ENVTL L. & POL'Y 422 (1993); George W. Pring & Geoffrey Sweitzer, *Book Review: Freer Trade, Protected Environment: Balancing Trade Liberalization and Environmental Interests*, 23 DEN. J. OF INT'L L. & POL'Y 227 (1994); George W. Pring & Brian S. W. Tobias, *Book Review: International Environmental Law and World Order*, 23 DEN. J. INT'L L. & POL'Y 599 (1995).

2. Dr. Nanda is also currently the vice president of the World Jurist Association and a past-President of the World Association of Law Professors.

tional environmental law since its emergence with the United Nation's Conference on the Human Environment in Stockholm in 1972.

Like other international environmental law treatises,³ the book begins with a traditional introductory chapter on "The Nature and Scope of the Challenge" this particular field of law faces-in Professor Nanda's words, nothing less than the challenge to "avert the catastrophe of continuing environmental degradation."⁴ The chapter discusses the sources of international environmental law as well as its problems, including inadequate scientific knowledge, state-centered sovereignty, and the "piecemeal" development of the law.

Following that, the book takes an innovative approach, "front-end-loading" three subjects generally considered to be advanced international environmental law and often relegated to the final chapters or neglected entirely in modern treatises. The three are: "The Global Commons," "International Trade and the Environment," and "The Environment and Human Rights."⁵

The "global commons" discussed in Chapter 2 are territories outside any one nation's jurisdiction, such as Antarctica, the atmosphere, oceans, and outer space; these are the frontiers for legal as well as physical exploration and are forcing us "to rethink traditional public

3. Given its youth, the field has not produced an abundance of legal treatises. Some of the others of high quality are PHILIPPE SANDS, *PRINCIPLES OF INTERNATIONAL ENVIRONMENTAL LAW* (1995), vol. I (analysis), vols. IIA and IIB (international documents), and vol. III (EC documents); PATRICIA W. BIRNIE & ALAN E. BOYLE, *INTERNATIONAL LAW & THE ENVIRONMENT* (1992 [1994 corrected]); ALEXANDRE KISS & DINAH SHELTON, *INTERNATIONAL ENVIRONMENTAL LAW* (1991); EDITH BROWN WEISS, *IN FAIRNESS TO FUTURE GENERATIONS: INTERNATIONAL LAW, COMMON PATRIMONY, AND INTERGENERATIONAL EQUITY* (1989). Collections of essays and articles on international environmental law are somewhat more abundant, including *INTERNATIONAL ENVIRONMENTAL LAW ANTHOLOGY* (eds. Anthony D'Amato & Kirsten Engel 1996); *A LAW FOR THE ENVIRONMENT* (eds. Alexandre Kiss & Françoise Burhenne-Guilmin, 1994); *ENVIRONMENTAL REGULATION AND ECONOMIC GROWTH* (ed. Alan E. Boyle 1994); *ENVIRONMENTAL CHANGE AND INTERNATIONAL LAW* (ed. Edith Brown Weiss 1992); *TRENDS IN ENVIRONMENTAL POLICY AND LAW* (ed. Michael Bothe, 1980). Political science treatments are also available, e.g., LAWRENCE E. SUSSKIND, *ENVIRONMENTAL DIPLOMACY: NEGOTIATING MORE EFFECTIVE GLOBAL AGREEMENTS* (1994); *THE INTERNATIONAL POLITICS OF THE ENVIRONMENT* (eds. Andrew Hurrell & Benedict Kingsbury 1992); LYNTON CALDWELL, *INTERNATIONAL ENVIRONMENTAL POLICY: EMERGENCE AND DIMENSIONS* (2d ed. 1990).

One of the best references (with extensive bibliographies on every conceivable topic) is a law school casebook: GURUSWAMY, PALMER & WESTON, *INTERNATIONAL ENVIRONMENTAL LAW AND WORLD ORDER: A PROBLEM-ORIENTED COURSEBOOK* (1994). For a guide to the collections of international environmental legal documents, see Pring & Joeris, *supra* note 1.

4. VED P. NANDA, *INTERNATIONAL ENVIRONMENTAL LAW & POLICY* 1 (1995) [hereinafter NANDA].

5. This is one of the strengths of this book. KISS & SHELTON, *supra* note 3, for example, largely ignores all three issues, while SAND, *id.*, picks up only on the trade-environment issue.

international law," according to the author. ⁶That perspective serves as an excellent vehicle for presenting some of the book's major themes—the role of economics, the "development vs. environment" problem, the difficulties posed by multinational enterprises, and the author's proposed "fundamental principles" for development of the law.

International trade, the subject of Chapter 3, has traditionally been viewed in a vacuum, divorced from its impacts on the environment, a situation Professor Nanda rightly criticizes. ⁷The North American Free Trade Agreement (NAFTA) and the General Agreement on Tariffs and Trade (GATT) and their progeny are examined in some detail in reaching the conclusion that trade "must recognize environmental concerns if it wishes to continue to be successful."⁸

Human rights is one of Professor Nanda's areas of significant expertise,⁹ and in Chapter 4 he illustrates how closely interwoven human and environmental rights are. Despite the Stockholm Declaration's pronouncement of a fundamental right to "an environment of a quality that permits a life of dignity and well-being," the book concedes that there is still much debate over whether such a right exists or should and cautiously concludes that the "human right" to environmental quality exists but requires formal United Nations recognition to become firmly established as law.

Chapters 5-9 present the history and institutions of international environmental law. In 10 pages, Chapter 5 takes the reader through an abbreviated look at the law's conventional and case development, a complex process that would justify a book in itself. The 1972 Stockholm Conference and subsequent U.N. environment programs are dealt with in Chapter 6; the 1992 U.N. Conference on Environment and Development in Rio de Janeiro, in Chapter 7; the work of the International Law Commission, in Chapter 8; and the environmental law of the European Union, in Chapter 9. The author cannot be accused of over-optimism: the pithy "Appraisals" that end each of these chapter highlight the questionable "precedential value" of the early legal pronouncements,¹⁰ the severe underfunding and lack of enforcement power of U.N. programs,¹¹ the compromises and "disappoint-

6. *Id.* at 11.

7. See Pring & Sweitzer, *supra* note 1.

8. *Id.* at 59.

9. For an example of Professor Nanda's works in the field of human rights, see VED NANDA, *HUMAN RIGHTS AND THIRD WORLD DEVELOPMENT* (1985); VED NANDA, *REFUGEE LAW AND POLICY* (1989); Ved Nanda, *The Protection of the Rights of Migrant Workers: Unfinished Business*, 2 *ASIAN AND PACIFIC MIGRATION JOURNAL* 161 (1993); Ved Nanda, *Human Rights and Environmental Considerations in the Lending Policies of International Development Agencies—An Introduction*, 17 *DENV. J. INT'L L. & POL'Y* 29 (1988).

10. NANDA at 82.

11. *Id.* at 101.

ment[s]" of Rio, ¹²the failure of the ILC to "keep pace with the international community's needs," ¹³and the law-"overwhelmed" institutions of the EU.¹⁴

Chapters 10-12 present in some detail three of the environmental arenas of concern: the upper atmosphere, oceans, and international watercourses. Thorough descriptions of stratospheric ozone depletion and global warming regimes are presented in Chapter 10, with particularly useful sections on the domestic U.S. response. Chapter 11 distills the law of the sea down to its essence and contains trenchant criticisms of the treaty's shortcomings. The ILC's 1990 Draft Articles on Non-navigational Uses of International Watercourses are analyzed in detail in Chapter 12. This is a more upbeat portion of the book, as Professor Nanda finds "cause for optimism" with all three legal regimes.¹⁵

The book concludes with a 13th chapter on "The Unfinished Agenda." This is particularly welcome, because there has been so little analysis of the last four years since Rio, the 1992 U.N. Conference on Environment and Development. The chapter documents the accomplishments of the new Commission on Sustainable Development (CSD) and the Global Environmental Facility (GEF) in implementing Agenda 21 and the necessity for increased financial aid. Professor Nanda foresees the next essential steps in law development to be protection of global commons, management of biotechnology, liability and compensation rules, environment and trade harmonization, controls on human settlements, and technology transfer.¹⁶ But this will not be enough; he forthrightly concludes that "the rhetoric at Rio . . . has not been matched by action," ¹⁷and, until we face the "formidable task" of dealing with issues like population, consumption, unsustainable development, poverty, economic imbalance, and sovereignty, "the goal of slowing and eventually reversing the rate of environmental degradation will remain illusory."¹⁸

Professor Nanda's *International Environmental Law & Policy* is a significant contribution to the field. No single-volume treatment of such a diverse field can satisfy every reader: this reviewer would have liked to see coverage of the laws on transboundary air pollution, toxics and hazardous wastes, environmental impact assessment, biological diversity, and compensation and liability for environmental harms.

12. *Id.* at 130-31.

13. *Id.* at 183.

14. *Id.* at 207. One criticism is that this book does not introduce in detail the many other governmental and nongovernmental international legal organizations in the field.

15. *Id.* at 256, 268, 297.

16. *Id.* at 304.

17. *Id.* at 308.

18. *Id.* at 299.

¹⁹But, while other treatises deal in depth with some of these issues, ²⁰they lack this volume's coverage of the very important emerging issues of the global commons, human right to environment, and trade vs. environment, major strengths of this book. It is a welcome addition to the growing literature on international environmental law and an important reference ²¹for every scholar, lawyer, and lay person interested in the field.

19. In fairness, the book does address these issues, but does so only in the context of the European Union's laws. *Id.* at 193-204.

20. *E.g.*, the Kiss & Shelton and the Sands treatises, *supra* note 3.

21. Another of its strengths is that it contains a remarkable 2,679 endnotes covering 129 pages, as well as a bibliography of over 150 books and articles, making it an excellent reference source.

