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SYMPOSIUM: GLOBAL CLIMATIC CHANGE

Introduction

VED P. NANDA

Two recent reports—*The Global 2000 Report to the [U.S.] President*¹ and *World Conservation Strategy*² prepared for the United Nations Environment Programme (UNEP)—contain a sober warning that the world environment and resources currently are under severe stresses which could seriously damage the Earth's carrying capacity. The Global 2000 report projects long-term trends and concludes that unless urgent actions throughout the world are taken now, human suffering and environmental damage will worsen with a consequent potential for international strife. The *World Conservation Strategy* book warns that the "planet's capacity to support people is being irreversibly reduced in both developed and developing countries,"³ and recommends institutional and planning guidelines for better management and conservation of living resources.

These reports are useful in enhancing public awareness of the nature and immensity of the problem which modern civilization faces. The gravity of the situation was dramatized in the early 1970's in the Club of Rome's controversial but valuable study, *The Limits to Growth*,⁴ which painted a rather grim picture of man's future. Since then there has grown a genuine interest and concern in studying the various aspects of the problem, exploring available alternatives, and fashioning innovative approaches toward amelioration of the existing conditions.

One such exploratory effort was made in the summer of 1980 when

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1. COUNCIL ON ENVIRONMENT QUALITY AND U.S. DEPT. OF STATE, *THE GLOBAL 2000 REPORT TO THE PRESIDENT: ENTERING THE TWENTY-FIRST CENTURY, SUMMARY REPORT* (1980) [hereinafter cited as *GLOBAL 2000*].

2. INTERNATIONAL UNION FOR THE CONSERVATION OF NATURE AND NATURAL RESOURCES, *WORLD CONSERVATION STRATEGY: LIVING RESOURCE CONSERVATION FOR SUSTAINABLE DEVELOPMENT* (1980).

3. *Id.*, Introduction.

4. D. MEADOWS, D. MEADOWS, J. RANDERS & W. BEHRENS, *THE LIMITS TO GROWTH* (Report to the Club of Rome, 1972).

the Aspen Institute of Humanistic Studies and the International Legal Studies Program of the University of Denver College of Law assembled a group of distinguished scientists, international lawyers, and social scientists in Denver to discuss selected issues of world climate change. The Denver meeting followed the World Climate Conference which had met earlier in Geneva and had "flashed some ominous signals about the number of disturbing trends relating to the world climate which could have disastrous effects on the biosphere and on humanity."⁵ Two of the participants at the Denver meeting, William Kellogg and Robert Schware, have also concluded after a recent year-long study: "If the consensus of the international climatological community is correct, and if worldwide use of fossil fuels continues to increase atmospheric carbon dioxide, mankind is likely to cause a significant average warming of the Earth's surface—a greenhouse effect—within the next 50 years."⁶

Although the damaging effects of coal smoke and auto emission in combination with other compounds in the atmosphere are not fully understood, it is widely recognized that acid precipitation has killed fish in many lakes in the United States, Canada, and in the Scandinavian countries.⁷ According to a recent news story,

not until the state [of New York] reported last December that hundreds of Adirondack lakes were dead or dying from acid precipitation was the gravity of the threat clear. And even that report did not convey what several days of interviews with several residents and state conservation officials established: Not only fish, but also other species are starting to disappear in one of the nation's wildest places.⁸

Recognizing the seriousness of the situation, the Eighth World Meteorological Congress in 1979 established the world climate program, one of whose four major components is its Impact Studies Program.⁹ The first phase of the program, to last from 1980 to 1983, includes efforts to: (1) reduce the vulnerability of food systems to climate change, (2) anticipate the impact of climate change caused by human activity, (3) improve the science of climate impact studies, and (4) identify human activities that are most sensitive to climate.¹⁰

At the two-day Denver meeting, on July 10 and 11, 1980, papers were presented identifying the nature of the problem, exploring the existing and alternative public and private international law institutions as re-

5. U.N. Dept. Public Information, Non-Governmental Organizations Section, *World Environment*, U.N. Doc. DPI/NGO/SA/80/6 (1980), at 1.

6. W. KELLOGG & R. SCHWARE, *CLIMATE CHANGE AND SOCIETY* 1 (1980).

7. U.S. EPA Research Summary, *Acid Rain* 674 (1979). See also GLOBAL 2000 at 336.

8. Blumenthal, *Acid Rainfall in the Adirondacks Disrupting the Chain of Life*, N.Y. Times, June 8, 1981, at 11, col. 1.

9. See World Meteorological Organization, *Outline Plan and Basis for the World Climate Programme 1980-1983*, WMO No. 540 (1979). See also W. KELLOGG & R. SCHWARE, *CLIMATE CHANGE AND SOCIETY* 125 (1981).

10. *Id.*, Appendix C.

sponses to weather and climate problems, and discussing policy implications of the various feasible remedies. The papers prepared for the conference will be soon released in a book entitled *World Climate Change: The Role of International Law and Institutions*.¹¹ Four chapters of the book comprise this symposium issue.

While all of these essays focus on various options of atmospheric management, Professors Edith B. Weiss and Ray Jay Davis are concerned primarily with the management itself, Professor Howard J. Taubenfeld surveys the legal responses, and Mr. Armin Rosencranz raises questions of feasibility of actual international cooperation.

Professor Taubenfeld provides a broad survey of the legal implications of controversies created by human responses to and manipulation of atmospheric change, with the underlying sense that "In many instances, the nature of the problems is already discernible and action is already necessary, for the effects of a failure to act immediately may not be felt for decades, and when these effects are felt, they may have become irreversible."¹² He raises the problem of national endeavors to the benefit of such interests as agriculture and industry, such as the reversal of river flow and conversion and harvestation of the great forests that are proving to have massive impacts on the cycles of nature. Against these practices, considered "domestic" issues by the actors and thus without the province of international regulation, international law has little authority. "Even raising the question may be considered an unwarranted interference with domestic concerns."¹³

Taubenfeld then discusses radical but inadvertent changes wrought upon the environment by the interaction of modern human activity and the workings of nature, and contemporary legal reactions to these problems. With respect to acid rain, for example, the ECE's recently made Convention on Transboundary Air Pollution calls for the joint development of control strategies in opposition to CO₂ pollution. While many nations accept the need for action, "[f]ew support any kind of international management or controls."¹⁴ On the subject of chlorofluorocarbons—a problem of uncertain, but global, consequences—action has centered in the individual nations. A change in the behavior of those most responsible industrialized nations would have a substantial ameliorative effect.

Considering the 1972 Declaration of the United Nations Conference on the Human Environment,¹⁵ Taubenfeld recognizes that, although the

11. *WORLD CLIMATE CHANGE: THE ROLE OF INTERNATIONAL LAW AND INSTITUTIONS* (V. Nanda ed. 1981).

12. Taubenfeld, *The Atmosphere: Change, Politics and World Law*, 10 *DEN. J. INT'L L. & POL'Y* 469, 469 (1981) [hereinafter cited as Taubenfeld].

13. *Id.* at 473.

14. *Id.* at 477.

15. Report of the United Nations Conference on the Human Environment (Stockholm, 5-16 June 1972), 1 *U.N. GAOR* (21st. plen. mtg.), *U.N. Doc. A/CONF.48/14 Rev. 1* (1972),

Declaration states useful norms and goals of the world community to salvage and recover the environment, yet there is not at present any mechanism for "resolving disputes as to scientific facts, for evaluating claims of injury and making binding awards, or for dealing with activities which affect the environment generally."¹⁶ Taubenfeld concludes his essay by briefly analyzing several of the existing bilateral and multilateral arrangements for curbing the overwhelming dangers of unchecked abuse of the environment, urging the wider use of intergovernmental agreements and agencies, to the ultimate extent of "a responsible world government with the ability to assure the equitable distribution of the rights to life, to material welfare, and to security."¹⁷

Professor Weiss considers the carbon dioxide problem to be a challenge for the international community which can be met by breaking "new ground to handle [CO₂'s] unique blend of political, economic, legal, and scientific issues."¹⁸ After describing the predicament, Weiss draws upon pertinent past prescriptions in international law for the management of carbon dioxide accumulations—agreements on international rivers and international basins, air pollution, and the evolving law on the use of shared resources. It is in this historical context that she presents national and international preventive and adaptive strategies for carbon dioxide pollution. She deems it essential that "the CO₂ problem should be viewed foremost as a problem in developing the appropriate transition strategy for moving from a fossil fuel to a nonfossil fuel economy in the next fifty to one hundred years."¹⁹

While an intensified search is likely "for technical solutions, such as ways to expand the capacity of oceans to absorb carbon dioxide or to limit carbon dioxide emissions,"²⁰ she considers it essential to anticipate and address "the effects of possible climate change, particularly upon water supplies and migration patterns, and upon the general dislocation of a country's economy . . ."²¹ She advises "countries that are likely to be adversely affected to join together in measures to alleviate the stress and damage caused by climatic changes."²²

Mr. Rosencranz draws the reader's attention to the inadequacy of the existing norms of international law and the available institutional structures in abating SO_x emissions sufficiently to remedy the problems caused by transboundary acid rain. The major causes are the unwillingness of nation states to comply with such norms unless it is in their na-

reprinted in 11 INT'L LEGAL MAT. 1416 (1972).

16. Taubenfeld, *supra* note 12, at 481.

17. *Id.* at 486.

18. Weiss, *A Resource Management Approach to Carbon Dioxide During the Century of Transition*, 10 DEN. J. INT'L L. & POL'Y 489 (1981).

19. *Id.* at 487.

20. *Id.* at 508.

21. *Id.*

22. *Id.*

tional interests, and the ineffectiveness of the institutional structures to compel compliance. Rosencranz, too, broaches the subject of the ECE convention and its implications for air pollution control, but he sees in this "breakthrough" that ultimately "no country has to alter its status quo unless it chooses to."²³ As a particular example of the obstacles to international cooperation, he discusses the Canada-United States SO_x treaty negotiations, based essentially on mutual self-interest and yielding no alleviation of the problem.

Optimistically, Rosencranz postulates a bright picture will emerge when a nation's courts first use the principles of the Stockholm Declaration in enforcement against its offending nationals. Despite the unpromising current outlook, Rosencranz sees the greatest advantage of the Declaration and efforts like it as being their effect in raising the world consciousness in environmental protection, particularly the danger of acid rain.

Professor Davis discusses the subject of weather modification and legal options for governmental management of atmospheric resources. Among the means discussed is incidental control, or the control exercised over weather modification activity, absent legislation directed at such activity, by application of existing regulation in related areas. For example: Because much of cloud seeding is done from federally owned land, "[i]ssuance or denial of permits [for special use of the land] would be a form of control over cloud seeding incidental to the general permit granting authority."²⁴ Under this section Davis also deals with the applicability of traditional legal rules of resource rights and tort liability.

He proceeds to discuss regulatory consequences of the flow of information, permitting and licensing of modification operations, the government's contract capacity and its own modification activity, and, ultimately, outright prohibition of modification by governments. Davis' assessment of these elements of governmental control on weather modification culminates in a recommendation that "there be careful consideration of control devices so that a proper combination of them will protect against indiscriminate weather modification programs, and secure an atmospheric environment favorably affecting the quality of life."²⁵

The conclusion seems inescapable that while further study is required on the part of scientists and social scientists into the technical issues of environmental pollution and ways to alleviate it, it is imperative, too, that international lawyers contribute to the future of control in three particular areas: (1) enhancing awareness, (2) refining norms and

23. Rosencranz, *The International Law and Politics of Acid Rain*, 10 DEN. J. INT'L L. & POL'Y 514 (1981).

24. Davis, *Options for Public Control of Atmospheric Management*, 10 DEN. J. INT'L L. & POL'Y 526 (1981).

25. *Id.* at 535.

strengthening institutional structures, and (3) exploring preventive and adaptive strategies in cooperation with science and social sciences.