

BOOK REVIEW:
ENVIRONMENTAL LAW DIMENSIONS OF HUMAN RIGHTS

Ben Boer (ed)
Oxford University Press (2015)
272 pp, ISBN: 9780198736141

Elizabeth Burleson*

Human rights and environmental issues have long been intertwined. Recognition of this relationship is on the rise. As individuals with expertise in each field increasingly bridge the epistemic divide, they see the commonalities and challenges involved in integrating human and environmental legal analyses. This book takes on this vast topic by gathering experts that critically analyze strategic elements of the human rights and environment tapestry. In this endeavor, Boer, both as editor and chapter author, and his co-authors succeed. Each delves into a different aspect of the links between environmental law and human rights in substantive and/or procedural terms. The book deftly explores four broad themes (1) private sector, (2) regional human rights tribunals, (3) Asian institutional and judicial, and displacement developments, and (4) the way forward for human rights and the environment.

The chapters are nuanced and clear, providing insights of interest to novice and veteran scholars alike. The book is thus valuable as critical reading to understand environmental and human rights interrelationships as well as a review of the complicated ways in which law and politics interact.

Calling for greater legal corporate accountability, Natasha Affolder highlights the impact that corporations continue to have on the human rights of citizens. After introducing the legal actors, she analyzes the legal tools, particularly contractual arrangements with communities, governments, and other entities that provide environmental governance to protect human and environmental integrity. As Affolder concludes, through enhanced corporate engagement with environmental rights, the tension between rights and market approaches can become better recognized and addressed in a manner that protects environmental and social integrity.

This discussion dovetails into an astute critique by Elisa Morgera addressing multinational corporation accountability pursuant to the *Convention on Biological Diversity's* benefit-sharing provision. Given the reality of contemporary lobbying leading to weakened regulation, she

*LL.M. London School of Economics, Fulbright Senior Specialist, IUCN Climate Legal Expert, founder of the Burleson Institute.

considers the role of law in refocusing corporations' priorities from pure profit maximization to seriously owning their respective responsibilities for common concerns of stakeholders. Beyond corporate responsibility, full corporate accountability can facilitate environmentally sound conduct. She highlights environmental impact assessment as a key means of bringing to light both social and environmental dimensions of corporate activity. Environmental impact assessments have done substantial heavy lifting in affecting decision-making processes. Environmental/human rights stakeholder engagement and participation significantly contribute to integrating human rights concerns into environmental assessments.

Riccardo Pavoni provides a comparative analysis of the European and Inter-American human rights courts' respective environmental jurisprudence. Procedural participation rights in these tribunals have marked a crucial milestone in expanding access to tribunals for those seeking judicial redress in environmental matters. In particular, as Pavoni describes, the European Court of Human Rights provides a best practice in linking rights to information and freedom of expression generally and for human rights defenders in particular.

Ludwig Kramer then considers the procedural rights debate between human rights and the environment in the context of environmental justice. His analysis of the right of access to environmental justice focuses on European Court of Justice jurisprudence. He argues that *Article 263* of the *Treaty on the Functioning of the European Union* (TFEU) concerning access to environmental justice has been given a very restrictive interpretation by the Court, an interpretation based more on political than legal grounds. This interpretation has substantial room for expansion pursuant to the Aarhus Convention Compliance Committee findings that the Court's current interpretation violates the European Union's obligations under the *Aarhus Convention*. Kramer calls for the Court to grant environmental non-governmental organizations standing on the basis of specified criteria as is done in a range of jurisdictions in Europe, and indeed, in a number of jurisdictions around the world.

Ben Boer addresses Asia-Pacific governmental and non-governmental human rights institutional development. Regional human rights instruments and substantive environmental rights are still only newly recognized throughout this region. Boer focuses on the *ASEAN Human Rights Declaration* (2012) and the inclusion of a right to a 'safe, clean and sustainable environment,' together with related rights. The Terms of Reference of the ASEAN Intergovernmental Commission on Human Rights provides that as a basic principle, decision-making is to be based on consultation and consensus. Boer goes on to analyze national constitutionalization of environmental rights throughout the Asia-Pacific region. He includes some crucial Asian court decisions addressing constitutional 'right to life' provisions as a basis for the establishment of environmental rights.

Stefan Gruber focuses on climate change displacement, including the right to life, and the human rights to food, water, health, and adequate housing. Pacific Island communities, South and Southeast Asia delta communities, and arid Northern China regions are all projected to see

substantial migration of peoples. Gruber rejects the *1951 Refugee Convention* as an adequate instrument to assist displaced people. He concludes that displacement needs to be addressed in conjunction with environmental law considerations. This provides a jumping off point for other scholars to contribute ways in which such interaction can occur. The international community needs to move beyond recognizing the gap in legal status for climate migrants to actually offering a legal framework.

Alan Boyle asks why recognize environmental protection as a human right. His answer is that a human rights perspective directly addresses environmental impacts on the life, health, private life, and property of individual humans. Boyle suggests expanding economic and social rights to include recognizing public interests in environmental protection—concluding that a right to a decent environment in some form should be broadly recognized.

He reviews a series of European Court of Human Rights cases that have recognized the right to private life and the right to life itself. He then analyzes the *Aarhus Convention's* expansion of environmental and human rights law. Boyle also considers the UN Independent Expert recommendation on the enjoyment of a 'safe, clean, healthy and sustainable environment' as an aspect of human rights. Boyle asks a challenging question: is it better to expand recognition of a right to a decent environment or would simply interpreting existing human rights law suffice. Boyle favors expansion within the context of the existing economic, social and cultural rights paradigm, which already recognizes rights to water, food, and environmental hygiene rather than engaging in the more challenging endeavor of expanding civil and political rights to encompass environmental rights.

Given the focus on the legal links among human rights and environmental dimensions, this reviewer would have liked a fuller discussion of how to enhance recognition of procedural environmental human rights. Access to Information, Public Participation, and Access to Justice can do substantial heavy lifting to give environmental rights greater stature without sinking any existing human rights regime. That said, these vast fields are not easily distilled into a single volume without losing form and substance. Thus, this book is a very valuable resource for the international lawyer or student thinking comparatively about human and environmental law and policy. Beyond its *ad hoc* assessments of given linkages, this book spans several specializations and offers comparative insights that come from studying dynamics that challenge integration of international law regimes. This book's analyses touch on some of the most important human rights and environmental interrelationships. Despite a desire for this book to have been capable of canvassing a broader range of linkages (better suited to a book series than a single volume) this book's collection of analyses is a valuable contribution to this new, and still developing field of international law. It is recommended reading for those seeking a greater understanding of the ways in which human and environmental rights challenge one another and are synergistic.