

International Environmental Law

This book analyzes the law and policy for the management of global common resources. As competing demands on the global commons are increasing, the protection of environment and the pursuit of growth give rise to all sorts of conflicts. The book analyzes issues in the protection of the global commons from a fairness, effectiveness, and world order perspective. The author examines whether current policy making and future trends point to a fair allocation of global common resources that will be effective in protecting the environment and in the pursuit of sustainable development. The author looks at the cost-effectiveness of international environmental law and applies theories of national environmental law to international environmental problems. Chapters include analysis on areas such as marine pollution, air pollution, fisheries management, transboundary water resources, biodiversity, hazardous and radioactive waste management, state responsibility, and liability.

Elli Louka is the founder of Alphabetic Development & Investment (ADI), a company devoted to environment and development. Louka was a senior fellow at the Orville H. Schell Center for International Human Rights at Yale Law School and a Ford Foundation Fellow at New York University School of Law. Dr. Louka is currently the recipient of the Marie Curie Fellowship provided by the European Commission of the European Union. Other selected publications by Dr. Louka include “Conflicting Integration: The Environmental Law of the European Union” (2004), “Biodiversity and Human Rights” (2002), “Overcoming National Barriers to International Waste Trade” (1994).

International Environmental Law

Fairness, Effectiveness, and
World Order

Elli Louka



CAMBRIDGE UNIVERSITY PRESS

Cambridge, New York, Melbourne, Madrid, Cape Town, Singapore, São Paulo

Cambridge University Press

32 Avenue of the Americas, New York, NY 10013-2473, USA

www.cambridge.org

Information on this title: www.cambridge.org/9780521868129

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First published 2006

Printed in the United States of America

A catalog record for this publication is available from the British Library.

Library of Congress Cataloging in Publication Data

Louka, Elli.

International environmental law : fairness, effectiveness, and world order / Elli Louka.

p. cm.

Includes bibliographical references and index.

ISBN-13: 978-0-521-86812-9 (hardback)

ISBN-10: 0-521-86812-2 (hardback)

ISBN-13: 978-0-521-68759-1 (pbk.)

ISBN-10: 0-521-68759-4 (pbk.)

1. Environmental law, International. 2. Natural resources – Law and legislation.

3. Environmental protection. I. Title.

K3585.L68 2006

344.04'6 – dc22

2006009174

ISBN-13 978-0-521-86812-9 hardback

ISBN-10 0-521-86812-2 hardback

ISBN-13 978-0-521-68759-1 paperback

ISBN-10 0-521-68759-4 paperback

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Preface

Law, as Dr. Elli Louka vividly demonstrates in this extraordinary book, is most usefully conceived as a process of clarifying and implementing the common interests of politically relevant actors. This conception is indispensable for understanding the development of international environmental law. The spread of industrialization, with its ever more intensive uses of the resources of the planet, followed by the evolution of a global civilization of science and technology and, in part as a consequence of those developments, the explosion of the population of the planet from 1.6 billion people in 1900, to 2.5 billion in 1950 and to more than 6 billion in 2000, have combined to put unprecedented and unrelenting stress on the ecological systems on which the life of our species depends. No other area of lawmaking and law-applying makes so clearly and vividly manifest the indispensable functions of all law: the maintenance of minimum order, the allocation and regulation of the use of scarce resources, and the conservation and allocation of the benefits and burdens of the world's resources in ways consistent with shared conceptions of equity.

Approaching this subject as if it could be studied as a body of static rules would be sterile. Instead, Dr. Louka presents a dynamic picture, in which the diverse actors in the international lawmaking process clarify key principles such as sovereignty over national resources, precautionary principles with respect to equitable cost-sharing of environmental externalities, principles of sustainable development, and common as well as differentiated responsibilities. Dr. Louka then shows how those principles are being applied in each of the major areas of international environmental law. Nor can general international law be excluded from such an examination, for the legal focus on the environment also has driven major changes in general international law, which has acknowledged the “tragedy of commons” and in response has authorized an increasing enclosure and nationalization of resources that for centuries had been part of the *res communis omnium*.

Using as framework this dynamic process in which international environmental law is clarified, prescribed and implemented, Dr. Louka reviews and synthesizes past trends and projections of probable future trends with respect to (1) the marine environment; (2) shared water resources; (3) fisheries resources; (4) the conservation of biodiversity; (5) air; (6) trade and environment; and (7) the disposal of hazardous and radioactive waste. Cutting across all of these trends and projection studies are the international efforts to establish and police reporting and information-sharing

regimes, many now driven by the daunting challenge of prescribing for some measure of liability in circumstances in which acts with the potential for causing significant transnational damage are not prohibited by international law. One of the many strengths of Dr. Louka's book is that it presents in extraordinarily rich detail the entire spectrum of the modern process of international environmental law.

Much of the writing in contemporary international environmental law is passionately and uncritically advocative. Although Dr. Louka's book is plainly animated by a deep concern for the preservation of the environment of the planet and the realization that in the context of a global civilization of science and technology, it can be protected only by effective international efforts, the stance adopted is not uncritical and Dr. Louka never surrenders the scholarly role. Precisely because some of the areas that Louka treats are – good intentions notwithstanding – marked by missteps or – serious efforts notwithstanding – have registered no significant successes, Dr. Louka's book will be important for the practitioner in the vineyard of international environmental law no less than for the political leaders who are charged with its development.

Dr. Louka has produced a remarkable book that will be of great of value to the profession.

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December 2005