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Introduction: International Environmental Law and Agencies: The Next Generation Symposium

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Introduction

International Environmental Law and Agencies: The Next Generation

ALFRED C. AMAN, JR.*

Since the Stockholm Declaration on the environment in 1972, numerous international environmental treaties have been written that address a variety of global problems, including ozone depletion, climate change, hazardous waste, endangered species, and ocean pollution. Most of these treaties establish their own administrative frameworks within which to pursue their goals, but various international regulatory agencies and organizations such as the World Bank, the International Monetary Fund, and the United Nations Environmental Program also play important independent and complementary regulatory roles.

The primary purpose of this symposium is to begin to assess the effectiveness of these treaties, agencies, and organizations in light of their ability to protect or improve the global environment. There is strong evidence to suggest that increasing world trade and production has dramatically increased global pollution and that the legal regimes currently in place can be made more effective. If these treaties and organizations are but the first steps towards achieving an international approach to environmental quality, what should the next generation of international environmental laws, agencies, and approaches look like? Do we have the necessary legal framework in place to protect the global environment, or are new approaches and reforms necessary?

This symposium, *International Environmental Law and Agencies: The Next Generation*, begins what we hope will be an ongoing dialogue assessing the effectiveness of current approaches to international environmental problems and analyzing new approaches as well. The editors of the *Indiana Journal of Global Legal Studies* view this symposium as but the first step in what we anticipate to be ongoing research projects involving not only university-based scholars in this field, but members of the practicing bar and relevant international and domestic agencies, as well. We hope to publish some of this new research in this Journal.

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The papers in this symposium provide an excellent starting point for this ongoing dialogue. Professors Chapman, Agras, and Suri set the stage for our discussion. They help place environmental law and issues in a global perspective, noting that while some local environments might benefit from lower-priced consumer goods and a relatively clean environment, pollution on a global level continues to rise. Their data challenge the proposition that increasing trade as a means of raising living standards necessarily leads to reduced pollution. In fact, their data suggest that global pollution has been increasing significantly in the face of such increases in trade, despite the many changes in the law that have occurred since the Stockholm Declaration.

Dr. Steer and Mr. Mason of the World Bank take a somewhat more optimistic perspective on global environmental issues and our ability to deal with them. They place a good deal of faith in the increasing ability of multilateral institutions, such as the World Bank, to further an effective global environmental agenda through creative financing approaches. By targeting projects in developing countries that are likely to have significant environmental effects, the World Bank can use its financing power to directly encourage the pursuit of sound environmental goals. The financial incentives that the Bank provides thus support significant environmental policy reforms within those countries.

Professor Mary Ellen O'Connell's article shifts our focus to a perennial issue in international law in general and international environmental law in particular--enforcement. But Professor O'Connell takes a very different approach to the problem of enforcement at the international level. She argues that domestic courts can and should play a more prominent role in this process. In so doing, she notes the progress made in the use of domestic courts in other areas involving human rights, such as in the area of war crimes. She posits these developments as useful models for us to consider when analyzing enforcement in international environmental contexts.

The symposium then looks at NAFTA as a case study of a recent international agreement with significant international environmental law potential. Professor Ileana Porras analyzes NAFTA as a possible model for future trade agreements that explicitly link trade and environmental issues. In so doing, she questions whether NAFTA's approach to harmonization sufficiently takes into account the economic inequalities that exist among its signatories. Requiring poor, low-standard states to harmonize upward may, in fact, undercut realistic, sustainable development programs in these countries.

Professor Jeffery Atik takes a critical view of NAFTA, arguing that as presently constituted, it represents a repudiation of harmonization. He notes the difficulty of accomplishing the goals of harmonization in the NAFTA context. Turning his attention to enforcement, specifically the enforcement of the differing national environmental standards that exist among the NAFTA signatories, he expresses skepticism in NAFTA's ability to minimize those differences in a way that will yield positive environmental results.

Finally, Professors Daniel Bodansky and Elisabeth Zoller both focus on international law and its role in developing environmental standards. Professor Bodansky's analysis of customary international law suggests that it can be used and developed more effectively than has heretofore been the case. He suggests new ways of conceptualizing customary law that will enable the international community to spend less time debating a norm's legal status and more time actually translating these general norms into enforceable treaties. This could have salutary consequences for the further development of international environmental law.

Professor Zoller focuses primarily on international governance issues. She argues that the future of reforms regarding international governance in general and governance matters relating to international environmental law in particular is best addressed by focusing on the role of great powers like the United States. In her view, the future of international environmental reform and the effectiveness of our global efforts to curb global pollution will depend, to a great extent, on the leadership role that the United States is willing to exercise.

Though not part of the symposium *per se*, Kyle Danish's article is one of the first responses to the symposium's call for new approaches to international environmental law. His analysis of the Desertification Convention of 1995 allows him to focus on that convention's "bottom up" approach to the environmental issues involved. This regulatory approach, coupled with new financing approaches, offers a significant alternative to more traditional, centralized, and state-oriented regulatory regimes.

This is the third symposium this *Journal* has sponsored since it began. The *Journal* has previously published symposia dealing with the Globalization of Law, Politics, and Markets (Fall 1993) and Migration and Globalization (Fall 1994). Like the symposia that have preceded it, the articles in this

volume help forge new collaborative relationships among scholars of different disciplines. In addition, this symposium facilitates the development of reforms and new perspectives on international environmental law that, we hope, will ultimately lead to effective reform.