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BOOK REVIEWS

Natural Resources and Sustainable Development. Edited by Celine Tan and Julio Faundez. Cheltenham, U.K., Northampton, MA: Edward Elgar Publishing, Inc., 2017. Pp. xi, 330. ISBN: 978-1-78347-837-8. US$ 150.00.

This book developed out of a workshop on International Law and Natural Resources organized at the University of Warwick, United Kingdom in September 2013. Some of the papers were first published in volume 11, issue 2 of the *International Journal of Law in Context* in 2015 and have been revised and re-edited for this book. The book reflects the sustained intellectual examination of the various aspects of the law and regulation of natural resources within the framework of development, sustainability, and human rights. The editors of the book were determined to address the special problems of countries of the global south, thereby giving the topics a geographical balance.

Besides the introductory chapter written by the editors, Celine Tan and Julio Faundez, the book is divided into 14 other chapters. In Chapter Two, Lorenzo Cotula discusses, "[I]nvestment Treaties, Natural Resources and Regulatory Space: Technical Issues and Political Choices in International Law." Cotula places international investment law at the heart of what he calls the changing interface between international economic regulation and natural resource rights. He explains that "[d]ecades of international treaty-making have created an extensive network of bilateral and regional investment treaties, including investment chapters in wider trade and investment treaties." Among other things, all these investment treaties seek to offer protection to the rights acquired by the foreign investor in natural resources. This is done in some respects through curtailing the regulatory space of the host country and in other respects, through providing an avenue for dispute settlement for the investor.

Cotula argues that the proliferation of investment treaties and arbitrations has made international investment law one of the most dynamic branches of international law and an important part of the legal architecture underpinning economic globalization. International investment law has also yielded more than its fair share of disputes, ranging from questions about substantive standards and dispute settlement mechanisms to various questions about the interface between treaty commitments and regulatory space. These disputes have engendered recalibration of older treaties and shifts in the way some investment treaties are formulated. In conclusion, Cotula raises the issue of lack of democracy in the formulation of investment treaties and counsels that there should be greater parliamentary and citizen engagement to help rethink international investment law and increase its perceived legitimacy.

In Chapter Three of the book, Celine Tan tackles political risk insurance (PRI) and the law and governance of natural resources. Tan examines the different kinds of PRI such as a multilateral facility like the World Bank's Multilateral Insurance Guarantee Agency (MIGA) or a state-sponsored facility like the United States Overseas Private Investment Corporation (OPIC). Tan sees PRI as a technology of governance and concludes that "the involvement of political risk providers, notably public insurers, in an investment project can significantly influence the project's operational design and investors' engagement with the host state and local communities." She explains that "as a mechanism of risk governance, the operational and regulatory framework of political risk insurance establish a set of normative discourses and operational practices that seek to manage not only the conduct of the capital-importing state vis-à-vis the foreign investor but also the host state's relationship with its domestic constituents."

Chapter Four, "The Extractive Industries Transparency Initiative in Africa: Overcoming the Resource Curse and Promoting Sustainable Development," provides Emma Wilson and James Van Alstine an opportunity to review the attempts by Nigeria, Ghana, and Uganda to overcome the proverbial resource curse. The authors note that "the term resource curse is used to explain why resource-rich countries exhibit poor economic growth, a decline in other sectors, excessive government spending, and misuse of revenue, increases in corruption, greater political authoritarianism and sometimes violent conflict." They point out that between 2010 and 2012, the Democratic Republic of Congo is reputed to have lost at least US$1.36 billion through corrupt mining deals, while Nigeria lost about US

$6.8 billion through corruption and mismanagement of fuel subsidy transfers. The Extractive Industries Transparency Initiative (EITI) has been touted as one way to meet the challenges of the resource curse.

The authors offer case studies in the implementation of EITI in their three countries of choice. They conclude that Ghana and Uganda, whose implementation of EITI has coincided or is about to coincide with the development of their oil and gas resources, show better results of meeting the challenges than Nigeria where EITI has come long after "elite bargaining, corruption and criminality are already embedded in the systems for managing extractive industries and resource revenues." In all instances, however, there is a need for subnational implementation of transparency initiatives so that they may reach the local people most affected by the extractive industry projects. The authors posit that advocates acknowledge that although transparency is insufficient to address the complex problems of the resource curse, it is an important first step towards starting the necessary but difficult conversation among the stakeholders, governments, companies, and civil society.

In Chapters Five and Six, the authors tackle the centrality of water in sustainable development. In Chapter Five, Juan Pablo Bohoslavsky, Liber Martin, and Juan Justo explore the implications of Bilateral Investment Treaties (BITS) on the state's duty to protect the human right to water and sanitation from violations caused by foreign investors in the natural resource arena. The State's duty, often derived from its treaty obligations under the International Covenant on Economic, Social and Cultural Rights, intersects and conflicts with its obligations to foreign investors under the BITs. In the end, the authors state that they seek to promote a solution to the conundrum engendered by the conflicting obligations through legal harmonization.

In Chapter Six, Daria Davitti uses the protection of the right to water in Afghanistan, a country seeking to develop its extractive industries in the midst of armed conflict, to consider the practical dimension of the relationship between investment and human rights. Against the backdrop of the unique political and economic context of Afghanistan, Davitti argues that a different approach to investment protection is needed; namely, one that in obedience to the United Nations Guiding Principles on Business and Human Rights places an obligation on the home states of foreign investors to regulate investors to uphold their responsibility to respect the human rights of the citizens of the host states.

In Chapter Seven, "Governance of Natural Resources in Latin America: The Commodities Consensus and the Policy Space," Julio Faundez discusses the impact of international legal rules on the natural resource policies of Brazil, Chile, and Ecuador during the recent commodities boom. The analyses center on hydro-energy projects in Brazil and Chile and a mining project in an environmentally protected area inhabited by indigenous communities in Ecuador. Faundez traces the evolution of the large body of international legal rules (bilateral and multilateral, soft law, and legal binding law) and how these three countries have managed to reconcile the contradictions in protecting foreign investors and the indigenous communities alike. Faundez remarks that while the indigenous communities and the citizens of the host countries were initially shortchanged, changes in institutional arrangements and the law is offering opportunities for greater redress to hitherto deprived communities.

Christina Ochoa's piece, "Generating Conflict: Gold, Water and Vulnerable Communities in the Colombian Highlands," gives her an opportunity to push back on the conventional wisdom that Foreign Direct Investment (FDI) is necessarily a stabilizing force. Using the increased interest of foreign mining companies in one of Colombia's gold rich regions as a case study, she finds that the Greystar/EcoOro mining project destabilized the population and caused conflict rather than perpetuated stability. Her chapter, Chapter Eight, concludes with a set of observations that may provide insight into diminishing the conflict and destabilization effects of FDI.

In Chapter Nine, "Situating the Amazon in World Politics," Manuela Lavinas Picq questions the popular false narrative of the Amazon as an "other" that is at the margins of world politics and invisible in the discipline of international relations. In the words of Picq, "the region was dismissed as irrelevant to world politics in the same way the Haitian Revolution was not recognized as a critical juncture in the international history of state-making." Picq engages in a three-part critical analysis of global politics that ends with the solution that "it is necessary to disrupt the global division of labor in knowledge production and proposes the Amazon as a fertile location for re-conceptualizing the international."

From the discussion of the Amazon in the international political sphere, Chapter Ten, "Tropical Forests, Climate Change and Neoliberal Environmental Governmentality," attempts to settle the "vexed relationship between international environmental law and neoliberal environmental governmentality." In this chapter, Sam Adelman traces the centrality of tropical forests in the global ecological system. He emphasizes that forests cover roughly a third of the earth's land surface, are home to about 90 percent of land-based animal and plant life, and provide food, shelter, fuel, and livelihoods to 1.6 billion people. He points out the dangers of deforestation as the

"best known example of a national resource becoming an international problem." He explains that this is why forests have become objects of governmentality under the United Nations Reducing Emissions from Deforestation and Forest Degradation (REDD+) framework, which seeks to enable forests to be simultaneously exploited and conserved. He examines the plight of the 370 million indigenous peoples of the world, most of whom are directly dependent on forests and other ecosystems for survival. He concludes that "conflicting principles and inadequate enforcement mechanisms limit the efficacy of international environmental law" and that saving forests and the planet may require resistance to neoliberal environmental governmentality rather than the production of subjects compatible with sustainable development.

In Chapter Eleven, "The Role of Law in the Economy and in Regulating Natural Resources and Environmental Protection in China," John McEldowney examines the current state of environmental protection in China. McEldowney notes that China has the world's largest population and the pollution levels in most of its major cities and towns rank at the highest global levels. Since the 1990s China has enjoyed economic growth of impressive proportions. The march to high growth levels and its increasing demand for natural resources, minerals, water, and land has come at a cost to its environmental health. China has undertaken environmental law reforms, including pollution controls, but with limited success at implementation and enforcement. The author points out that environmental protection in China is largely a work in progress. The China Environmental Protection Act of 2014 sets a new direction by empowering citizens to take a pro-active interest in the environment. China's active participation in the Paris Agreement of December 2015 is also another step in the right direction. Ultimately, however, the jury is still out on whether these positive pro-environment gestures will yield the right dividends.

In Chapter Twelve, "Natural Resources and Global Value Chains: What Role for the WTO?," Fiona Smith first discusses what role global value chains play in natural resources and sustainable development. She then examines the limitations of the current WTO rules as they function in a world dominated by corporate power. She concludes that in conjunction with other instruments, they play a useful role and that time is needed to determine their effectiveness and, by implication, what changes should be made to improve the regulatory regime.

In Chapter Thirteen, "Sustainable Chemical Regulation in a Global Environment," Sharron McEldowney tackles the subject of international regulation of the chemical industry. She points out that "the chemical industry acts as an important driver for the extraction of a variety of natural resources found in developing countries and adds to pressures that may result in over-exploitation of limited resources." She discusses the impact of the three key international treaties regulating the industry and recognizes the challenges with the current regime. In addition to the Basel Convention, the Rotterdam Convention, and the Stockholm Convention, McEldowney calls for a more far-reaching and sweeping treaty or treaties that would cover a greater range of chemicals and their total life cycles and will inculcate sound chemical management.

In the penultimate chapter of the book, David Ong reviews attempts by plaintiffs from host countries to seek remedies in home country jurisdictions for environmental and social harms caused by multinational corporations. Ong selects three cases, one each from the U.S., the Netherlands, and the U.K. and all involving the Royal Dutch Petroleum Corp and its Nigerian subsidiary and Nigerian citizen plaintiffs domiciled in Nigeria. In the U.S. case, *Kiobel v. Royal Dutch Petroleum* (Shell),[1] the Supreme Court held that the Alien Tort Claims Act,[2] the vehicle for the plaintiff's claims, did not apply extraterritorially to ensnare defendant corporations for harms caused abroad. In the Dutch and the U.K. cases, *Akpan & Ors v. Royal Dutch Shell & Shell Petroleum Development Company (SPDC) of Nigeria Ltd*,[3] and *Bodo Community & Ors v. Shell Petroleum Development Company of Nigeria Ltd*,[4] respectively, the Courts were more receptive to the foreign claimants. Both courts rejected the *forum non conveniens* defense that had traditionally been deployed by home country foreign investors to avoid more costly litigation in their home countries. By applying EU Brussels 1 Regulation,[5] the Dutch and U.K. Courts found that they had jurisdiction over the claims and ruled in favor of the foreign claimants. Ong notes,

[1] *Kiobel v. Royal Dutch Petroleum(Shell) Co.* 133 S. Ct. 1659 (2013).

[2] 28 USC §1350 (2011).

[3] *Akpan & Ors v. Royal Dutch Shell & SPDC of Nigeria Ltd, District of Hague (Rechtbank's Gravenhage)*, January 30, 2013 C/09/337050/HA ZA 09-1580.

[4] *Bodo Community & Ors v. SPDC of Nigeria Ltd* [2014] EWHC 1973 (TTC).

[5] Regulation No. 1215/2012 of the European Parliament and of the Council of December 12, 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters OJL 351/1.

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however, that despite these successes, the problem of environmental harm through oil spills and pollution persists in Nigeria. It appears there is still work to be done to obtain real redress.

The final chapter, Chapter Fifteen, continues with the issue of dispute settlement, but this time through the Courts. Claire Buggenhoudt examines how investor-state arbitrations resolve the conflict between the protections provided foreign investors in international investment agreements and the host states' interest in pursuing sustainable development within their regulatory policy space. Buggenhoudt analyzes the International Center for Investment Disputes (ICSID) system and decisions of representative disputes by ICSID, and concludes that "there still exists considerable uncertainty regarding the right of states to regulate foreign investment." Buggenhoudt states that this uncertainty is not helpful to either the foreign investor or the host state. As a palliative she proposes the urgent development of "an explicit framework to determine the standard of review in investment disputes that raise issues of public interest."

This collection of essays on natural resources and sustainable development shines a light on the many vistas of the topic. While each chapter brings a refreshing review of extant literature on the specific area of enquiry, the in-depth analysis of particular jurisdictions or industries makes for a better understanding of the issues at stake. In some cases new ground is broken where the authors debunk old ideas. Manuela Lavinas Picq's chapter on "situating the amazon in world politics" is a good example. After reading it, one is not likely to view the Amazon in the same way again. I recommend this book to scholars and practitioners alike.

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Information Sovereignty: Data Privacy, Sovereign Powers and the Rule of Law. By Radim Polčák and Dan Jerker B. Svantesson. Northampton, MA: Edward Elgar, 2017. Pp. xvii, 268. ISBN: 978-1-78643-921-5. US$ 135.00.

Suppose criminals breach an international bank's database of customer accounts. The bank's datacenter is in the United Kingdom, the hackers are based in China (but worked through computers in Thailand), and the data is used to defraud customers in the United States, France, Japan, and Brazil. Which state(s) has jurisdiction to investigate and prosecute the criminals? In *Information Sovereignty: Data Privacy, Sovereign Powers and the Rule of Law*, Radim Polčák and Dan Jerker B. Svantesson argue that international law's reliance on territoriality as the primary basis for jurisdiction is ill-suited to the information age.

The authors contend that territorial control makes little sense when applied to information that is routinely transmitted and processed in multiple sovereign states. As a pragmatic matter, territoriality prevents states from acting appropriately regarding cyber security, data privacy, and law enforcement investigations. Instead, the authors propose that jurisdictional doctrine should recognize that information is not a static object that sits exclusively in one state at a time, but rather a process that can be performed in multiple states. More than one state at a time should be able to have jurisdiction over an information process.

The authors propose that a state has jurisdiction when there is a substantial connection between the matter and the state, the state has a legitimate interest in the matter, and the exercise of jurisdiction is reasonable given the balance between the state's legitimate interests and other interests. Applying this framework to the example above, any of the states involved may have a valid claim to some kind of jurisdiction over the breach.

The authors distinguish between legislative, judicial, and enforcement jurisdictions, and add a new type, investigative jurisdiction. Using the authors' framework, perhaps the United States and China would have investigative jurisdiction and thus be empowered to collect evidence on the hacking, even if the datacenter through which the stolen data was routed is in the United Kingdom. Given that information processes, the technical infrastructure that carries the data, and the private corporations that own the cables and computers often cross national borders, the authors' framework offers a theoretical basis for exercising jurisdiction over those processes. The authors focus on jurisdiction over cyber security, evidence gathering by law enforcement, and data privacy, but the framework could be applied to other information matters such as intellectual property and international financial transactions. The framework could also be used for rethinking the foundation of cross-border jurisdiction in our interconnected world.