

# ENVIRONMENTAL LAW IN THIRD WORLD COUNTRIES: CAN IT BE ENFORCED BY OTHER COUNTRIES?

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## I. INTRODUCTION

As Third World countries<sup>1</sup> develop into more industrialized countries, they face numerous problems relating to their social, economic and political development.<sup>2</sup> Many Third World countries have incorporated the ideas of state sovereignty, state equality, and the principles of non-aggression and non-intervention, in their search for their place in the framework of international law.<sup>3</sup> However, many Third World countries are still searching for their respective places in the global economy.

Many developing countries<sup>4</sup> tend to follow development patterns that depend heavily on the use of their natural resources, to the detriment of the environment.<sup>5</sup> As a result, some countries have caused irreparable damage

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1. There are two broad categories of Third World countries. The low income developing countries consisting of the African countries, some Latin American countries, and middle to high income Third World countries consisting of high performing Asian countries. See Yemi Osinbajo & Olukonyisola Ajayi, *Human Rights and Economic Development in Developing Countries*, 28 INT'L LAW 727, 730 (1994).

2. BARRY E. CARTER & PHILLIP R. TRIMBLE, *INTERNATIONAL LAW*, 46 (2d ed. 1995).

3. *Id.*

4. For purposes of this paper, *developing countries* is used as another word for Third World countries.

5. Yemi Osinbajo & Olukonyisola Ajayi, *Human Rights and Economic Development in Developing Countries*, 28 INT'L LAW 727, 730 (1994). See also Harmful Wastes Decree No.42

to their ecosystems. At one time a great number of Third World countries regarded environmental concerns as problems for rich countries and environmental regulation as another impediment to their economic development.<sup>6</sup> Other Third World countries believe that economic growth and development cannot be attained without damaging the environment.<sup>7</sup> A few of the poorer Third World countries have chosen economic development over environmental protection, even though they have agreed to many of the treaties and conventions on environmental protection and have created many modern environmental laws.<sup>8</sup> As a result enforcement of environmental laws was not a priority for these countries, however this sentiment is changing.

The enforcement of environmental laws is not a new problem. Many countries and numerous organizations, both domestic and international, have been debating this problem for years. However, with the continued growth of economies all over the world, environmental protection has been pushed to the forefront of international affairs. Since Third World countries are experiencing the largest amount of growth, they are particularly scrutinized over their respective environmental laws and the frequency with which they are enforced.<sup>9</sup>

In order to determine if a Third World country's environmental laws can be enforced by other countries, this article will first explore the process by which international law is created as well as the role each type of international law plays in shaping environmental law. The issue of whether a Third World country's environmental laws can be enforced by other countries will be analyzed. Furthermore, this article will briefly look at how some of the environmental problems in Third World countries started and how some countries are dealing with the problem of environmental degradation. Finally, an analysis of how Third World countries can enforce their own laws with the help of other countries and international organizations will be addressed.

## II. CREATION AND EFFECTIVENESS OF INTERNATIONAL LAW

The international treaties and other agreements in force today are insufficient to manage the environmental crises within the current

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of 1988 (Nig.); Federal Environmental Protection Agency Decree No. 58 of 1988 (Nig.). See generally Yemi Osinbajo, *Some Public Law Considerations in Environmental Protection, in Environmental Laws Including Compensation* 128 (J. Omotola ed., 1990).

6. *Id.* at 740.

7. Osinbajo & Ajayi, *supra* note 5, at 739.

8. *Id.* at 741.

9. See generally Osinbajo & Ajayi, *Human Rights and Economic Development in Developing Countries*, 28 INT'L LAW 727 (1994).

framework of international law.<sup>10</sup> The treaty making process is inadequate as an effective remedy for the world's accelerating environmental problems because treaties take a very long time to implement.<sup>11</sup> This is the case of the 1992 Rio Declaration.<sup>12</sup> Overall the treaty seems to move the world's environmental and developmental systems forward, but analysis of the treaty reveals that there are some vague principles and the regulations of the treaty are not accepted by all states. For example, the United States has taken reservations concerning principles 3, 7, 12 and 23.<sup>13</sup>

After an agreement is signed, states must then proceed with the process of ratification by its own government.<sup>14</sup> Furthermore, the treaty does not become legally binding until a specified number of states complete their national ratification processes and formally agree to be bound by the conditions and obligations of the treaty.<sup>15</sup> This process can take months or even years.

Custom also seems inadequate to deal with the intensifying demands upon the earth's environment.<sup>16</sup> "International legal customs take decades, and sometimes centuries, to evolve into common and accepted practice."<sup>17</sup> Even though most states realize that the global environmental structure is diminishing, there is no clear environmental custom that exists within the realm of international law.<sup>18</sup> No custom exists because no established pattern of dealing with environmental problems has been determined from state interactions with each other.<sup>19</sup> The current state of the earth's environment, shows that a majority of states do not regard themselves as

10. Krista Singleton-Cabbage, *International Legal Sources & Custom*, 2 ILSA J. INT'L. & COMP. L. 171, 180 (1995). See also Max Valverde Soto, *General Principles of International Environmental Law*, 3 ILSA J. INT'L & COMP. L. 194 (1996).

11. Singleton-Cabbage, *supra* note 10, at 180.

12. See United Nations Convention on the Rio Declaration of Environment and Development, June 16, 1992, 31 I.L.M. 876 [hereinafter Rio Declaration].

13. Rio Declaration principle 3 (opposition to the right to development; principle 7 (rejection of any interpretation that would imply a recognition or acceptance by the United States of any international obligations or liabilities, or any diminution in the responsibilities of developing countries; principle 12 (insistence that in certain situations, trade measures may provide an effective and appropriate means of addressing environmental concerns; and principle 23 (insistence that nothing in the Declaration prejudices or predetermines the status of any territories under occupation or the national resources that pertain to such territories). Fletcher, Rio-Decl.txt, <<http://www.tufts.edu/fletcher/multi/texts/RIO-DECL.txt>>, <<http://www.iisd.ca/linkages/vol102/0213032e.html>>.

14. Singleton-Cabbage, *supra* note 10, at 180.

15. *Id.*

16. *Id.* at 183.

17. *Id.*

18. *Id.*

19. Singleton-Cabbage, *supra* note 10, at 184.

being bound by established *opinio juris*<sup>20</sup> or by the mandatory regulation of national action by *jus cogens* norms.<sup>21</sup>

Since there is no international instrument of global application that defines the rights and duties of states in environmental matters, many agreements and treaties are in effect and more continue to be created and ratified.<sup>22</sup>

International law has developed between two opposing concepts.<sup>23</sup> The first principle declares that states have sovereign rights over their natural resources.<sup>24</sup> The second principle declares that states should not cause damage to the environment.<sup>25</sup> Under the first principle, it can be inferred that the states alone have the right to create and regulate their own environmental laws, within their respective borders, to the exclusion of other states. If this inference holds true then only the respective state can enforce its own environmental laws.

However, the second principle suggests that the concept of sovereignty is not absolute, and is subject to a general duty not to cause environmental damage to the environment of other states, or to areas beyond a state's national jurisdiction.<sup>26</sup> If sovereignty is not absolute then it appears that any state can enforce the environmental laws of another state in order to protect the world environment.

These contradicting principles may confuse some states, such as Third World countries, that are attempting to create environmental laws for the first time or attempting to enforce already existing environmental laws. Another complication in the creation and implementation of environmental law is the fact that some of the rules have no definite meaning and there is no common agreement among the states on the legal consequences of these rules.<sup>27</sup> However, states are not relieved of their duty to protect the environment because current principles are confusing because "the rules of permanent sovereignty over natural resources, the responsibility to prevent environmental damage, good neighborliness, and cooperation in relation to environmental protection are well established and rooted in state practice

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20. *Opinio juris* is defined as widespread consistent practice by states done from a sense of legal obligation. See CARTER & TRIMBLE, *supra* note 2, at 143-6.

21. *Jus cogens* comes from moral law. It is a peremptory norm, which means that all states must follow the rule whether they agree with it or not. See CARTER & TRIMBLE, *supra* note 2, at 130.

22. Max Valverde Soto, *General Principles of International Environmental Law*, 3 ILSA J. INT'L & COMP. L. 193, 194 (1996).

23. *Id.* at 194.

24. *Id.*

25. *Id.*

26. Soto, *supra* note 22, at 195.

27. *Id.* at 208.

and in international instruments."<sup>28</sup> These concepts may provide the basis upon which Third World countries can build or expand their environmental rules and regulations.

### III. ENVIRONMENTAL LAW REGULATION IN THIRD WORLD COUNTRIES

The problem of environmental degradation concerns both industrialized countries as well as Third World countries. Therefore, environmental protection is a challenge shared by all countries. In order to establish some semblance of an agreement concerning environment protection, the policies of states should advance and not affect the present and future development of Third World countries.<sup>29</sup> No treaty or agreement has been enacted that gives one country the authority to enforce the laws of another country.

Natural resources are being depleted and many regions of the world are faced with the possibility of irreversible, physical, social and economic destruction.<sup>30</sup> This is especially true in Third World countries. Third World countries are in varying stages of development, ranging from the poorest of the poor to other countries, such as China, India, South Korea and Mexico, who are on the verge of breaking into the industrialized world, with many degrees and combinations of circumstances in between.<sup>31</sup> As a result, many of these countries seem more concerned with continued economic growth than with global climate changes.<sup>32</sup>

Furthermore, as these countries move toward sustainable economic development pressure is placed on each country's environment as well as the global environment. It has been determined that to bring all Third World countries to the consumption level of the United States by the year 2060 would require four percent economic growth per year.<sup>33</sup> The yearly impact of economic activities on the environment would be sixteen times what it is today - which is not even remotely conceivable.<sup>34</sup>

Continued development in Third World countries has caused these countries to exhaust their natural resources. As a result, each country's environment has suffered irreparable harm. For example, as a result of rapid economic development in Taiwan and South Korea, terrible environmental destruction has occurred, yet these countries are currently held up as models for all Third World countries to follow.<sup>35</sup>

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28. *Id.*

29. *Id.* at 205.

30. Soto, *supra* note 22, at 205.

31. *Global Warming Talks to Begin*, THE NEWS & OBSERVER, Nov. 30, 1997, at 1.

32. *Id.*

33. Edward Goldsmith, *Can The Environment Survive The Global Economy?*, THE ECOLOGIST, Nov. 21, 1997, at 1.

34. *Id.*

35. *Id.*

Many Third World countries are dumping grounds for industrialized nations as well as multinational corporations because some countries have no environmental laws or their laws are rarely enforced.<sup>36</sup> By taking advantage of the ignorance of local people and corrupt government officials, developing countries, at times, have paid many Third World countries money in order to dump toxic wastes.<sup>37</sup>

Many transnational corporations<sup>38</sup> are major investors in Third World countries.<sup>39</sup> As a result of their abundant financial resources, these corporations play a decisive role in both the economic development as well as the political development of the countries where they do business.<sup>40</sup> Therefore, Third World countries are placed in an awkward position because in the global economy no country can strengthen environmental laws that would increase corporate costs without putting itself at a competitive disadvantage with its competitors.<sup>41</sup>

Deregulation has also meant problems for Third World countries playing host to transnational corporations. Many Third World countries have set up "free-trade zones" where many corporations have established themselves, thereby eliminating any regulations on labor or the environment.<sup>42</sup> Wherever these "free-trade zones" are established there is massive environmental destruction.<sup>43</sup> However, international law has yet to clearly state whether a corporation operating abroad can or should be forced to follow the environmental laws of its home country.<sup>44</sup> Until this question is clearly answered transnational corporations will be allowed to continue their exploitation of Third World countries.

However, many Third World countries are starting to realize the adverse effect their economic activities are having on their respective environments and the whole world. Many Third World countries have begun the process of creating environmental laws and agencies to assure enforcement of these laws.

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36. See Yemi Osinbajo and Olukonyisola Ajayi, *Human Rights and Economic Development in Developing Countries*, 28 INT'L LAW 727, 740 (1994).

37. *Id.*

38. Transnational corporations are enterprises owning or controlling production of service facilities outside the countries in which they are based. Osinbajo and Ajayi, *supra* note 4, at 730.

39. Osinbajo and Ajayi, *supra* note 36, at 730

40. *Id.*

41. Goldsmith, *supra* note 35, at 8,9.

42. *Id.* at 10.

43. *Id.*

44. *Australians Push For More Rules on Companies Working Abroad*, WORLD ENVIRONMENT REPORT, Jan. 17, 1996, at 2.

One such country is Brazil. Brazil has had a comprehensive set of environmental laws for years, but the country did not seem willing to enforce them.<sup>45</sup>

In February 1989, the various environmental agencies, in Brazil, united to form the Brazilian Institute of Environmental and Renewable Natural Resources (IBAMA), Brazil's environmental protection agency.<sup>46</sup> However, critics described the organization as "disorganized and so poorly funded that it cannot do its job."<sup>47</sup> Economics have played an important part in Brazil's unwillingness to enforce its environmental laws.<sup>48</sup> According to Sao Paulo's environmental secretary, Alair Caffé Alves, "if environmental laws were applied vigorously, many industries would have to close. This would result in more unemployment which could be worse for the environment in the long run."<sup>49</sup> However, observers think that Brazil's environmental enforcement record will improve.<sup>50</sup> An example of this anticipated improvement came in late 1996 when IBAMA took a two year moratorium on mahogany and some other hardwood extractions-the kind that often wastes other trees and requires destructive road building.<sup>51</sup> It also cancelled some 65% of logging licenses.<sup>52</sup>

Another Third World country that has enacted new environmental ethics and laws is China. China has shown its commitment to environmental protection by increasing investment in environmental protection by 1.2 percent of its gross domestic product.<sup>53</sup> China has also held to a policy of sustained development based upon comprehensive utilization of natural resources and protecting and improving the environment while making sure that its economic and social development benefit future generations.<sup>54</sup> In addition, China has promoted different environmental protection programs, however, more efforts should be made to tighten law enforcement and set up effective public supervision systems.<sup>55</sup> Even though many Third World countries are still trying to bring their environmental regulations up to world standards, they have

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45. *Brazil's Environmental Legislation is Complete, But Not Enforced*, ENVIRONMENT WATCH LATIN AMERICA, May 1, 1992, at 1.

46. *Id.*

47. *Id.*

48. *Id.*

49. *Brazil's Environmental Legislation is Complete, But Not Enforced*, ENVIRONMENT WATCH LATIN AMERICA, May 1, 1992, at 1.

50. *Id.*

51. Mary Jo McConahay, *Amazonian Futures*, CHOICES-THE DEVELOPMENT MAGAZINE, April 1997, at 19.

52. *Id.*

53. *China: Making A Cleaner World*, CHINA DAILY, June 5, 1998, at 1.

54. *Id.*

55. *Id.*

made strides to deal with the problem of environmental degradation that comes with economic development.

#### IV. ANALYSIS: CAN THE ENVIRONMENTAL LAWS OF THIRD WORLD COUNTRIES BE ENFORCED BY OTHER COUNTRIES

Environmental protection is the responsibility of all states. However, the responsibility for environmental degradation does not fall equally on each state because each state has taken a different development path causing some states to carry more of the burden of environmental protection.<sup>56</sup>

States cannot legally intervene in the internal functioning of other states.<sup>57</sup> Sovereign states have the legal right to further development and to pursue policies that are perceived to be in their national interest, despite environmental consequences that may extend beyond political boundaries.<sup>58</sup>

As stated earlier, states have sovereign rights over their natural resources. As such, each state controls how its laws are enforced. Even though many governments of Third World countries are still in the developing stages, other states must respect each country's national sovereignty and its capacity to enforce its own environmental laws. If industrialized countries are allowed to enter a Third World country in order to enforce that country's environmental laws, then state sovereignty will be destroyed. If state sovereignty is destroyed, years of international customs, treaties and general principles will be seen as invalid.

Since environmental damage in one state can damage the environment of another state, some kind of enforcement must be established. Instead of trying to enforce the environmental laws of Third World countries, efforts should be made to help these countries set up agencies within their own borders to create and enforce environmental regulations.

Many Third World countries are making a conscious effort to enforce their own environmental regulations. For some countries environmental enforcement is a new concept because they are used to massive deregulation or no laws at all. This is how most Third World countries get most of their corporate business. Many corporations set up their business operations in Third World countries because there is little or no enforcement of environmental regulations. However, some Third World countries have decided that corporate dollars are not worth losing their natural resources.<sup>59</sup>

Even though the problem of environmental degradation is immediate allowing industrialized countries to enforce the environmental laws of Third World countries will not alleviate the problem. Furthermore many

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56. Soto, *supra* note 22, at 205.

57. *Id.*; See also Singleton-Cabbage, *supra* note 10, at 178.

58. *Id.*

59. McConahay, *supra* note 51, at 1.

Third World countries certainly will not allow another country to enforce their environmental laws. An act of this magnitude may be seen as an attempt to take over the government of the country, especially in Third World countries with unstable governments.

Although many international treaties, customs and general principles are not adequate to handle the world's environmental problems<sup>60</sup>, they may offer hope to some Third World countries.<sup>61</sup> Since many Third World countries are in the initial stages of creating and enforcing their own environmental regulations, international agreements offer a framework for these countries to imitate. Furthermore, many international agreements, such as treaties, also offer Third World countries the ability to enforce environmental laws against countries that violate international environmental laws. This power further eliminates the need for other countries to come into Third World countries and attempt to enforce their environmental laws.

Instead of trying to enforce the environmental laws of Third World countries, developed countries should create new ways of ensuring that the developmental problems attributed to Third World countries, such as poverty, are not allowed to cause irreparable damage to the earth's natural resources.<sup>62</sup>

Another reason that the environmental laws of Third World countries cannot be enforced by other countries is because the government of each country should be respected and allowed to deal with its country's problems within its own borders. Many of these countries have science and technological skills that are equal to those of more industrialized countries.<sup>63</sup> Furthermore, if industrialized countries are allowed to go into Third World countries and enforce those countries environmental laws, does that mean Third World countries will be allowed to go enforce the industrialized countries environmental laws. For many years and even today, industrialized countries have caused many of the world's environmental problems, yet no Third World country has been allowed to go into these countries to enforce their environmental laws.

Many of the environmental problems in Third World countries come from their ties with industrialized countries. Industrialized countries and many multinational corporations have been dumping toxic wastes in Third World countries, yet on numerous occasions they have blamed Third World countries for polluting the environment. Before the world's

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60. Singleton-Cabbage, *supra* note 10, at 171-72.

61. Under principle six of the Rio Declaration on Environment and Development developing countries are given distinct priority in the field of environmental protection. See <<http://www.iisd.ca/linkages/vo102/0213032e.html>>.

62. Osinbajo & Ayaji, *supra* note 4, at 741.

63. Vandona Shiva, *Voices From the South: The Environmental Agenda*, Choices, July 1992, at 16.

environmental problems can be addressed industrialized countries must take responsibility for their part in causing the world's environmental problems instead of blaming the Third World countries. One way industrialized countries can take responsibility is to lead by example. As many industrialized countries make efforts to slow environmental degradation within their borders, Third World countries may be compelled to do the same.<sup>64</sup>

In many parts of the world Third World countries are seen as poor little countries stricken by poverty, illiteracy and corrupt government officials. In many Third World countries this is true, but many countries have stable governments and are developing at a rapid pace.<sup>65</sup> Moreover, there are some industrialized countries where poverty, illiteracy and corrupt government officials are also a problem.

Furthermore, industrialized countries should not be allowed to enforce the environmental laws of Third World countries because Third World countries are capable of enforcing their own environmental laws with the help of industrialized countries and international organizations, such as the World Bank.<sup>66</sup> One way that industrialized countries can help Third World countries to enforce their environmental laws is through investing in environmental protection projects, such as helping the Chinese build energy efficient electric generating stations with smokestack controls, in order to prevent acid rain.<sup>67</sup> Some observers think that the World Bank's main goal should be underwriting the prevention and control of global pollution.<sup>68</sup> If Third World countries can attract foreign investment to help fund their environmental projects, it would be easier to enforce environmental laws as well as curb further environmental problems. However, many of the answers sought by Third World countries may well come from their own citizens who live with these problems on a daily basis.

## V. CONCLUSION

The economic development of Third World countries depends on the manner in which these countries utilize their resources, both human and environmental. In order to assure that these countries continue to develop without totally depleting their natural resources and causing greater pressure on the global environment, there must be cooperation and help from all parties involved, including industrialized countries, international organizations and transnational corporations.

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64. Daniel C. Esty, *U.S. Must Lead on the Environment*, *NEWSDAY*, June 25, 1997, at 2.

65. Osinbajo & Ayaji, *supra* note 4, at 740.

66. Esty, *supra* note 64, at 2.

67. *Id.* at 3.

68. *Id.*

There has to be more involvement by all the parties who have an interest in the global environment, which is every country in the world.<sup>69</sup> Some observers suggest that transnational corporations and non-governmental organizations should be given more responsibility in legal negotiations since they have contributed to the environmental problems and solutions in the Third World.<sup>70</sup> This suggestion is a good starting point but until international organizations, such as the United Nations, are given more teeth to police environmental activities, pollution and other forms of environmental degradation will persist.

As more Third World countries receive the financial help and technological support needed to curb the problems inherent in economic development, more countries will enact environmental regulations. There is no need for other countries to come into Third World countries to enforce environmental laws because many of these countries will continue to enact and enforce their own laws, it will just take time.

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69. Soto, *supra* note 22, at 186.

70. *Id.* at 187.