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Protecting the Environment for Future Generations – Principles and Actors in International Environmental Law

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Preface

This book compiles the written versions of presentations held at the occasion of an international symposium entitled “Protecting the Environment for Future Generations – Principles and Actors in International Environmental Law”. The symposium was organized by the Institute of Environmental and Technology Law of Trier University (IUTR) on the basis of a cooperation scheme with the Environmental Law Institute of the Johannes Kepler University Linz, Austria, and took place at the conference center of the European Law Academy in Trier on 29-30 October 2015. It brought together a distinguished group of experts from Europe and abroad to address current issues of international and European environmental law.

Climate change and the protection of biological diversity pose central challenges to the international community. Rising sea-levels, global warming and over-development of finite natural resources, be they living or non-living, not only affect present generations, but will have to be managed on a much broader scale by future generations. How can these challenges be adequately met in law? Indeed, while international environmental law is characterized by the existence of numerous rules, principles, multilateral agreements, guidelines, codes etc., these instruments are often not effectively implemented or enforced. Against this background, the main objective of the symposium was to take stock of the actors and principles of international and European environmental law, and to analyze how and to what extent these principles have been implemented on the supranational (i.e. European) and domestic levels. It was thus aimed at facilitating and strengthening the international and transnational discourse concerning current issues of international and European environmental law that have arguably still not been explored in a sufficient manner.

In recent years, the development of this branch of international environmental law has been strongly influenced by decisions of international courts and tribunals, the most important of which being the judgments of the International Court of Justice in the *Gabčíkovo Nagymaros* (1997) and *Pulp Mills* (2010) cases, the advisory opinions of the International Tribunal for the Law of the Sea of 2011 and 2015, and the awards rendered by the arbitral tribunals in the *Indus Waters Kishenganga River Arbitration* (2013) and the *Chagos Marine Protected Area Arbitration* (2015). These decisions were carefully analyzed in the course of the symposium, and particular attention

Preface

was paid to their relevance concerning the further development of environmental principles such as the principle of prevention, the precautionary principle, the polluter pays principle, the principle of sustainable development and the principle of common but differentiated responsibilities. This analysis was complemented by an examination of how these principles could be operationalized in light of the ever growing risk of conflict between the use of environmental goods and their protection (resource exploitation *versus* protection of biodiversity; fisheries *versus* preservation of the marine environment). In line with the relevant case-law, procedural instruments such as the duty to inform, consult and conduct environmental impact assessments, due diligence obligations and the concept of public participation were considered as being of particular relevance in this context. Furthermore, selected speakers were asked to address the issue of transferability of domestic and supranational legal approaches to the international level in order to enhance the level of implementation and enforcement of international environmental law. Other presentations tackled the challenge of fragmentation of international environmental law by focusing on ways and mechanisms to prevent and resolve collisions of different environmental legal regimes.

As far as its actors are concerned, international environmental law is characterized by unprecedented diversity, a development that has arguably partly modified the central role of the State. Amongst the actors that have gained increasing influence concerning the development of this sub-system of international law are international courts and tribunals as well as the dispute settlement system of the World Trade Organization, but also international and supranational organizations, compliance committees and conferences of the parties based on multilateral environmental agreements, and more informal institutions such as the Intergovernmental Panel on Climate Change (IPCC), and Intergovernmental Platform on Biodiversity and Ecosystem Services (IPBES). With particular regard to the concept of environmental justice, individuals and non-governmental organizations must also be counted among the relevant actors in international law concerning environmental protection. Thus, in light of the growing importance of non-State actors in this field, examining new schemes of environmental governance is not only a timely exercise, but an essential task.

Contributions from European and non-European domestic legal systems that were and are for historic reasons notably influenced by German and European Union environmental law, such as the legal systems of China, Japan

and Taiwan, constituted the third thematic focus of the symposium. Without ignoring the existence of specific national features, these contributions made it possible not only to trace the impact of international and European environmental law on the respective domestic legal systems, but also to emphasize specific challenges concerning the implementation and enforcement of international environmental law on the national level. Furthermore, these country reports aimed at facilitating comparative legal analysis, and at fostering a transnational dialogue about experiences and challenges concerning the development of environmental principles.

The symposium could not have taken place without the support of the staff of the Institute of Environmental and Technology Law of Trier University, of whom *Helga Hartmann*, *Karina Zenzen* and *Thomas Koch* deserve special mention for the smooth and simply excellent organization of the entire event. I am also indebted to *Amber Rose Maggio* for having proofread all manuscripts.

Trier, November 2016

Alexander Proelß

Contents

Preface

<i>Prof. Dr. Alexander Proelß, Institute for Environmental and Technology Law, Trier University</i>	5
The No Harm Rule and the Principle of Prevention: Two Sides of the Same Coin? <i>Prof. Dr. Ekkehard Hofmann, Institute for Environmental and Technology Law, Trier University</i>	11
Discretion and Judicial Review in European Environmental Law <i>Prof. Dr. José Carlos Laguna de Paz, Universidad de Valladolid</i>	27
Precaution and Climate Change: What Role for the Precautionary Principle in Addressing Global Warming? <i>Prof. Dr. Rosemary Rayfuse, University of New South Wales</i>	61
General Principles and Fragmentation of International Environmental Law <i>Prof. Dr. Thilo Marauhn, Justus-Liebig-University Gießen</i>	79
General Principles and the Duty to Undertake an EIA: Relationship, Requirements and Practice <i>Prof. Dr. Sara De Vido, Università Ca' Foscari Venezia</i>	89
WTO Dispute Settlement Body – An Actor in International Environmental Law? <i>Prof. Dr. Peter-Tobias Stoll, Georg-August-University Göttingen</i>	123
The European Union's Impact on the Development of International Environmental Law <i>Prof. Dr. Ludwig Krämer, ClientEarth Brussels</i>	143
Climate, Technology, 'Justice' <i>Prof. Dr. Stephen Humphreys, London School of Economics</i>	171
The Principle of Sustainable Development – A Critical Reflection of European and Austrian Law <i>Prof. Dr. Erika Wagner, Institute of Environmental Law, Johannes Kepler University Linz</i>	191

Contents

Precaution and the Use of Nuclear Energy – Experiences from Japan – <i>Prof. Kenji Shimoyama, Graduate School of Law & School of Law, Nagoya University</i>	215
Transformation of the Principles of International Environmental Law in Taiwan <i>Prof. Dr. Gao Anton Ming-Zhi, Institute of Law for Science and Technology, National Tsing Hua University</i>	231
The Precautionary and ‘Polluter Pays’ Principles in Austria – More Than Just Lip Service? <i>Prof. Dr. Ferdinand Kerschner, Institute of Environmental Law, Johannes Kepler University Linz</i>	279
Japanese Environmental Law in the Context of Globalisation. – A Focus on Chemical Law – <i>Prof. Dr. Yumiko Nakanishi, EU Studies Institute, Hitotsubashi University, Tokyo</i>	283
Participation in Environmental Impact Assessment Processes: The Example of Taiwan <i>Prof. Dr. Wang Yun-Ju, National Chung Cheng University, Chiayi</i>	305
Participants	323