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Defending the Environment
Defending the Environment: Civil Society Strategies to Enforce International Environmental Law

Linda A. Malone & Scott Pasternack
For Erin and Corey always, for their children, and in memory of Joan Fitzpatrick.

For Deb, who tolerated all those just-fifteen-more-minute hours.
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I am pleased to introduce this impressive exposition of legal strategies and resources that civil society can use internationally in its efforts to protect the environment and health. International environmental initiatives undertaken by governments will remain marginal unless they are addressed in an integrated manner with those international economic endeavors that continue to retain a primary role in international law-making and institutional arrangements. The involvement of civil society has helped to balance long term environmental goals and shorter term economic priorities. This book contributes greatly to the continued involvement of civil society in strengthening these international environmental obligations by providing civil society with useful legal tools for use in both the international and domestic arenas. The focus on enforcement, particularly by civil society, is now central to the evolution of an effective international environmental law.

Malone and Pasternack identify options for enhancing accountability for environment and health obligations at international and domestic levels. Problem resolution strategies are offered in numerous arenas—human rights commissions, international financial institutions, trade regimes, treaty dispute resolution processes, and international and domestic courts and tribunals—all with the aim of promoting access to environmental information. The emphasis is strongly on the practical application of environmental claims. This is apparent from the book’s emphasis on the pursuance of an environmental claim through multilateral environmental and public health agreements. Chapter 5, for example, assesses the selection of an international court or tribunal, such as the International Court of Justice, the International Tribunal for the Law of the Sea, the International Criminal Court and the Permanent Court of Arbitration, as well as the International Court of Environmental Arbitration and Conciliation.

In providing a framework Malone and Pasternack identify and assess three approaches to the protection of non-human species and habitats through environmental human rights. The examination provides a practical outline for using international human rights law and institutions, such as UNESCO, the UN Rapporteur on Health and the UN Human Rights Committee. They also propose that international financial institutions such as the World Bank should be encouraged to adhere to applicable environmental and health standards. The book then examines formal dispute resolution processes for enforcement of environmental protection standards.
In addition to this most useful discussion of international strategies, the concluding chapter identifies domestic tools for implementing an integrated strategy. The discussion of the usage of domestic mechanisms ranges from public information campaigns and the Code of Corporate Citizenship to the Alien Tort Claims Act. Again, the book addresses the proper choice of forum and the complexities of U.S. federal courts for the enforcement of environmental claims that have international affects. They encourage the use of the Administrative Procedures Act and the National Environmental Policy Act as a basis for these claims and also promote use of the Freedom of Information Act as a tool for access to environmental information.

This is a comprehensive and accessible work that will be of considerable utility to practitioners and others who are interested in the enforcement of environmental and health standards. Identifying the mechanisms for bringing to an end international environmental violations, as well as identifying the substantive elements of what may constitute a violation, are two vital steps to environmental improvement, sustainable development, and the promotion of health. This book guides the reader to the critical third stage—meaningful and committed enforcement. The book promises to make a serious, useful and sustained contribution to the development of international environmental law.

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The objective of this volume is to aid those who seek to defend the environment. It succeeds very well in this purpose, describing the different procedures in international and American fora that may be used by environmental activists. The exhaustive review of the possibilities which can be used by all elements of civil society and of the rules which may be invoked presents at the same time an overall picture of international environmental law, a relatively new field of law. In addition to its practical usefulness, this work thus also contributes to a better understanding of that legal system, whose age can be estimated at little more than thirty years.

The importance of the legal protection of the environment is generally recognized and based on an understanding that care for the survival of our biosphere is a fundamental part of the common concern of humanity. Still, such recognition has not resulted so far in the establishment of proper international institutions or tribunals to ensure compliance with the norms of the new branch of international law. This enhances the importance of the possibility to utilize compliance mechanisms outside environmental institutions, in favor of those where the development of international law is more advanced, like the international protection of human rights. Even where mechanisms are more recent, such as those concerning international trade, the availability of quasi-judicial proceedings allows environmental claims to be heard.

The description of such mechanisms and the opportunities they offer for environmental protection also leads to some thinking on the nature of present international law as a whole. The indirect means for defending the interests of the environment, which can be used, may recall the reaction of a living organism which lacked a proper organ necessary to serve a vital function and which then developed another organ to ensure its continued health and well-being. Such reaction is proof of the importance of the given function, but also of the vitality and the capacity of adaptation of the whole system. In other words, outside its practical value, the research by the authors of the present book shows both the fundamental importance of environmental protection by international means, and the strength of present international society. It demonstrates that despite certain negative manifestations, international law is able to defend fundamental interests of the whole of mankind.

Thus, while some derive a negative impression from the lack of proper international legal mechanisms to ensure compliance with international
environmental law, a positive conclusion can be reached. This book also shows the emergence and the vitality of international civil society and can greatly contribute to enhancing its possibilities of action. One may think of the image of a poet who described the state of a society by the following comparison: although the sailors think they govern their ship, the real master of their destiny is the sea itself.

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