

ENVIRONMENTAL PROTECTION AND HUMAN RIGHTS

With unique scholarly analysis and practical discussion, this book provides a comprehensive introduction to the relationship between environmental protection and human rights that is being formalized into law in many legal systems. By illuminating human rights theory and the institutions that can be employed to meet environmental goals, this book instructs on environmental techniques and procedures that assist in the protection of human rights. The text provides cogent guidance on a growing international jurisprudence on the promotion and protection of human rights in relation to the environment that has been developed by international and regional human rights bodies and tribunals. It explores a rich body of case law that continues to develop within states on the environmental dimension of the rights to life, to health, and to public participation and access to information. Five compelling contemporary case studies are included online that implicate human rights and the environment, ranging from large dam projects to the creation of a new human right to a clean environment.

Donald K. Anton has been practicing and teaching international law and environmental law since 1988. Since 2000, he has been a member of the faculty of the Australian National University College of Law, where he teaches international environmental law, international law, marine and coastal law, international climate law, and environmental law. He is the author or coauthor of *International Environmental Law: Cases, Materials, and Problems* (2007); *International Law: Cases and Materials* (2005); *International Law: Politics, Values, and Functions* (1998); and *A Question of Justice Challenge: Global Environmental Protection* (1996).

Dinah L. Shelton is the Manatt/Ahn Professor of International Law at the George Washington University Law School and a member of the Inter-American Commission on Human Rights of the Organization of American States. Shelton is the author or editor of three prize-winning books, *Protecting Human Rights in the Americas* (coauthored with Thomas Buergenthal, 1982), *Remedies in International Human Rights Law* (2006), and the three-volume *Encyclopedia of Genocide and Crimes Against Humanity* (2004) as well as author of *International Environmental Law* (2004) and other publications in the fields of human rights and environmental law. She was awarded the Elisabeth Haub Prize for Environmental Law.

Environmental Protection and Human Rights

Donald K. Anton

Australia National University
College of Law

Dinah L. Shelton

George Washington University
School of Law



CAMBRIDGE
UNIVERSITY PRESS

CAMBRIDGE UNIVERSITY PRESS

Cambridge, New York, Melbourne, Madrid, Cape Town,
Singapore, São Paulo, Delhi, Tokyo, Mexico City

Cambridge University Press

32 Avenue of the Americas, New York, NY 10013-2473, USA

www.cambridge.org

Information on this title: www.cambridge.org/9780521747103

© Donald K. Anton and Dinah L. Shelton 2011

This publication is in copyright. Subject to statutory exception
and to the provisions of relevant collective licensing agreements,
no reproduction of any part may take place without the written
permission of Cambridge University Press.

First published 2011

Printed in the United States of America

A catalog record for this publication is available from the British Library.

Library of Congress Cataloging in Publication data

Anton, Donald K.

Environmental protection and human rights / Donald K. Anton, Dinah Shelton.

p. cm.

Includes bibliographical references and index.

ISBN 978-0-521-76638-8 (hardback) – ISBN 978-0-521-74710-3 (pbk.) 1. Environmental law,
International. 2. Human rights. I. Shelton, Dinah. II. Title.

K3585.A58 2011

344.04'6–dc22 2010037108

ISBN 978-0-521-76638-8 Hardback

ISBN 978-0-521-74710-3 Paperback

Cambridge University Press has no responsibility for the persistence or accuracy of URLs for external
or third-party Internet Web sites referred to in this publication and does not guarantee that any
content on such Web sites is, or will remain, accurate or appropriate.

To Louis Henkin, teacher, colleague, and friend; and to Joseph Sax, who generously supported my first attempt at international environmental advocacy. They have led the struggle to defend human rights and protect the environment.

– DKA

To Connor Dillon, Nikolas Leith, and Claire Jillian Robinson, whose right to enjoy the wonders of the earth and transmit the same to their descendants must be preserved.

– DLS

Brief Contents

1. Law and the Environment	<i>page</i> 1
2. The Environment as a Human Rights Issue	118
3. An Introduction to Human Rights Origins and Theory	151
4. The International Protection of Human Rights	224
5. International Human Rights Institutions and Procedures	281
6. Procedural Human Rights and the Environment	356
7. Substantive Human Rights and the Environment	436
8. Indigenous Peoples, Rights, and the Environment	545
9. Humanitarian Crises: Armed Conflicts and Other Disasters	666
10. Environmental Rights and International Finance: The World Bank Example	779
11. Human Rights, the Environment, and Corporate Accountability	863

Contents

Acknowledgments	page xxv
Abbreviations	xxxii
Table of Cases	xxxv
1. Law and the Environment	1
I. Introduction	1
A. Defining the Environment and Its Characteristics	2
Questions and Discussion	3
B. State of the Planet	3
Millennium Ecosystem Assessment: <i>Ecosystems and Human Well-Being: Synthesis</i>	3
Questions and Discussion	16
II. Approaches to Environmental Protection	16
A. Private Actions	17
1. Nuisance, Strict Liability, and Negligence	17
<i>Indian Council for Enviro-Legal Action v. Union of India</i>	17
Questions and Discussion	21
<i>Trail Smelter Case (U.S. v. Can.)</i>	24
Questions and Discussion	27
Note on the Pulp Mills Case	28
2. The Public Trust Doctrine	30
<i>United Plainsmen Association v. North Dakota State Water Conservation Commission</i>	31
Questions and Discussion	35
B. Public Regulation	36
Christopher H. Schroeder, <i>Lost in Translation: What Environmental Regulation Does That Tort Cannot Duplicate</i>	37
Questions and Discussion	42
1. Standard Setting	42
Code of Federal Regulations (U.S.), Title 16, Part 1303 – Ban of Lead-Containing Paint and Certain Consumer Products Bearing Lead-Containing Paint	43
2. Restrictions and Prohibitions	44
Endangered Species Act of 1973	44
3. Licensing	47

4. Environmental Impact Assessment Procedures	48
OP 4.01 – Environmental Assessment, World Bank Operational Manual	48
5. Land Use Regulation	52
6. Criminal Law	52
C. Market Mechanisms	53
Christopher H. Schroeder, <i>Lost in Translation: What Environmental Regulation Does That Tort Cannot Duplicate</i>	54
D. Rights-Based Approaches	55
Questions and Discussion	56
III. International Environmental Law	56
A. Sources: What Is International Law?	57
1. Treaties	57
a. Adoption of Treaties	59
b. Compliance with Treaty Obligations	60
c. Treaty Interpretation	60
d. Enforcement	61
e. Common Environmental Treaty Techniques	61
2. Customary International Law	62
3. General Principles of Law	62
4. “Soft Law”	63
B. Relationship of International Law and Domestic Legal Systems	64
C. The Development of International Environmental Law	67
1. Beginnings to Stockholm	67
Stockholm Declaration on the Human Environment	68
Questions and Discussion	72
2. From Stockholm to Rio	73
The Rio Declaration on Environment and Development	74
Questions and Discussion	77
3. From Rio to Johannesburg	78
4. The World Summit on Sustainable Development	79
5. UNCSD 2012	80
D. Principles of International Environmental Law	80
1. Prevention of Harm	80
2. Precaution	81
<i>Canada Ltée (Spraytech, Société d’arrosage) and Services des espaces verts Ltée/Chemlawn v. Hudson (Town)</i> , no. 114957	82
Questions and Discussion	85
3. The Polluter-Pays Principle	86
4. Sustainable Development	87
<i>Case Concerning the Gabčíkovo-Nagymaros Project (Hungary v. Slovakia)</i>	88
<i>Jayal and Others v. India and Others</i>	89
Questions and Discussion	90
5. Equitable Principles	90
a. Intergenerational Equity	91
<i>Minors Oposa v. Secretary of the Department of Environment and Natural Resources</i>	92

Questions and Discussion	95
b. Common but Differentiated Responsibilities	95
c. Equitable Utilization of Shared Resources	96
E. Major International Environmental Agreements	97
1. Biological Diversity and Species Agreements	97
Questions and Discussion	100
2. U.N. Framework Convention on Climate Change and the Kyoto Protocol	100
3. U.N. Convention on the Law of the Sea	104
4. The Ozone Agreements	106
5. Hazardous Substances and Waste	108
F. Compliance and Enforcement	110
1. State Responsibility	110
2. Compliance Procedures	112
3. Periodic State Reporting	113
4. Civil Society Petitions	114
Questions and Discussion	115
2. The Environment as a Human Rights Issue	118
I. Introduction	118
A. <i>Tension or Complementarity?</i>	119
Questions and Discussion	120
B. A Primer on Rights	120
1. Human Rights and Universal Aspirations	121
Mary Ann Glendon, <i>A WORLD MADE NEW: ELEANOR ROOSEVELT AND THE UNIVERSAL DECLARATION OF HUMAN RIGHTS</i>	121
Makau Mutua, <i>The Complexity of Universalism in Human Rights</i>	122
Questions and Discussion	122
2. Rights of the Environment	122
Questions and Discussion	123
C. When Rights Conflict	126
Stephanie Peatling, <i>People First, River Second . . .</i>	126
Christopher Stone, <i>Should Trees Have Standing? Towards Legal Rights for Natural Objects</i>	127
Questions and Discussion	128
Roderick Frazier Nash, <i>THE RIGHTS OF NATURE: A HISTORY OF ENVIRONMENTAL ETHICS</i>	129
Questions and Discussion	130
II. Human Rights Approaches to Environmental Protection	130
A. Mobilizing Human Rights for the Environment	130
Dinah Shelton, <i>Environmental Rights</i>	130
Questions and Discussion	133
Michael R. Anderson, <i>Human Rights Approaches to Environmental Protection: An Overview</i>	134
Questions and Discussion	138
B. Critiques and Responses	138
Günther Handl, <i>Human Rights and the Protection of the Environment</i>	139

Questions and Discussion	141
Luis E. Rodriguez-Rivera, <i>Is the Human Right to Environment Recognized Under International Law? It Depends on the Source</i>	141
III. The Environmental Justice Dimension	145
Hari M. Osofsky, <i>Learning from Environmental Justice: A New Model for International Environmental Rights</i>	145
Questions and Discussion	147
IV. Recognition of the Rights Related to the Environment in Law	148
Philippe Sands, <i>PRINCIPLES OF INTERNATIONAL ENVIRONMENTAL LAW</i>	148
Questions and Discussion	149
3. An Introduction to Human Rights Origins and Theory	151
I. The Development of Human Rights	151
A. Introduction	151
Imre Szabo, <i>Historical Foundations of Human Rights and Subsequent Developments</i>	151
Ruti Teitel, <i>Human Rights Genealogy</i>	153
Questions and Discussion	154
B. Religious, Cultural, and National Legal Antecedents	154
1. Religious Traditions	154
Questions and Discussion	156
2. Philosophical and Cultural Roots	157
Questions and Discussion	159
3. Historical Laws of Local Nature	160
Questions and Discussion	163
C. International Law on Specific Issues Before the Twentieth Century	163
1. Religious Liberty	163
2. Abolition of Slavery and the Slave Trade	164
3. The Emergence of Humanitarian Law	166
4. Injury to Aliens	167
Questions and Discussion	167
D. The Early Twentieth Century	168
1. Economic and Social Rights: Capitalism, Industrialization, and the Formation of the International Labour Organization	168
2. The League of Nations and Minorities Treaties	170
3. Civil and Political Rights for Women	171
Questions and Discussion	171
E. Generalizing Human Rights in Global and Regional Systems of Protection	172
1. Standard Setting (1948–1969)	173
2. Development of Compliance Mechanisms (1967–1998)	177
3. Individual Complaints Procedures	180
4. From State to Individual Responsibility (1998–present)	182
F. Normative and Institutional Evolution	182
Questions and Discussion	185

G.	The Challenge of Human Rights in the Realm of the <i>Domaine Réservé</i>	185
	<i>Charter of the United Nations</i>	187
	Henry Steiner, <i>The Youth of Rights</i>	187
	Questions and Discussion	188
II.	The Idea of Human Rights	188
A.	The Nature of Human Rights	189
	Jerome J. Shestack, <i>The Philosophical Foundations of Human Rights</i>	189
	Eugene Kamenka, <i>Human Rights, Peoples' Rights</i>	191
	Questions and Discussion	191
B.	A Case for Human Rights	192
	Louis Henkin, THE AGE OF RIGHTS	192
	Questions and Discussion	194
C.	Critiques of Human Rights and Responses Thereto	195
	Cass Sunstein, <i>Rights and Their Critics</i>	195
	Upendra Baxi, <i>Voices of Suffering, Fragmented Universality, and the Future of Human Rights</i>	199
	Questions and Discussion	201
	Karl Klare, <i>Legal Theory and Democratic Reconstruction</i>	202
	Questions and Discussion	203
	A.H. Robertson & J.G. Merrills, HUMAN RIGHTS IN THE WORLD: AN INTRODUCTION TO THE STUDY OF THE INTERNATIONAL PROTECTION OF HUMAN RIGHTS	203
	Question and Discussion	204
III.	Perspectives on Human Rights Claims	204
A.	Natural Law	204
	J. Shand Watson, THEORY AND REALITY IN THE INTERNATIONAL PROTECTION OF HUMAN RIGHTS	205
	Question and Discussion	206
B.	Legal Positivism	207
	Questions and Discussion	207
C.	Feminist Theory	208
	Hilary Charlesworth, <i>Feminist Ambivalence About International Law</i>	208
	Questions and Discussion	210
D.	New Stream Scholarship	211
	Deborah Z. Cass, <i>Navigating the Newstream: Recent Critical Scholarship in International Law</i>	211
	Questions and Discussion	213
E.	Human Dignity	214
	Rhoda E. Howard, <i>Dignity, Community, and Human Rights</i>	214
	Oscar Schachter, <i>Human Dignity as a Normative Concept</i>	215
	Paolo G. Carozza, <i>Human Dignity and Judicial Interpretation of Human Rights: A Reply [to Christopher McCrudden]</i>	216
	Questions and Discussion	218
	Jack Donnelly, <i>Cultural Relativism and Universal Human Rights</i>	218

	Rosalyn Higgins, PROBLEMS AND PROCESS: INTERNATIONAL LAW AND HOW WE USE IT	219
	Questions and Discussion	220
IV.	Individual Duties as a Means of Social Ordering	220
	Universal Declaration of Human Responsibilities (<i>Proposed by InterAction Council</i>)	220
	Questions and Discussion	222
4.	The International Protection of Human Rights	224
I.	Introduction	224
II.	The Universal Declaration of Human Rights	225
	UNIVERSAL DECLARATION OF HUMAN RIGHTS	226
	Questions and Discussion	229
III.	U.N. Treaties: The Core Agreements	231
	Questions and Discussion	232
	Matthew Craven, THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL, AND CULTURAL RIGHTS: A PERSPECTIVE ON ITS DEVELOPMENT	232
	Questions and Discussion	236
A.	The Obligations Imposed by the Covenants	236
	<i>The Nature of the General Legal Obligation Imposed on States Parties to the Covenant Human Rights Committee</i>	237
	Questions and Discussion	241
	General Comment No. 3 [of the Committee on Economic, Social, and Cultural Rights]	242
	General Comment No. 9 [of the Committee on Economic, Social, and Cultural Rights]	243
	General Comment No. 14 [of the Committee on Economic, Social, and Cultural Rights]	245
	Questions and Discussion	247
B.	Implementation of the Covenants by the Treaty Committees	248
	Laurence R. Helfer & Anne-Marie Slaughter, <i>Toward a Theory of Effective International Adjudication</i>	248
	Questions and Discussion	251
IV.	Regional Systems for the Protection of Human Rights	251
	Dinah Shelton, <i>The Promise of Regional Human Rights Systems</i>	251
V.	Economic, Social, and Cultural Rights: Justiciability	255
	<i>Republic of South Africa v. Grootboom</i>	256
	Questions and Discussion	258
VI.	Human Rights and Environmental Harm	259
	<i>Social and Economic Rights Action Center and the Center for Economic and Social Rights v. Nigeria</i>	260
	Questions and Discussion	269
VII.	Common Aspects of Human Rights Treaties	270
A.	Reservations	270
	VIENNA CONVENTION ON THE LAW OF TREATIES	270

General Comment No. 24 (52) [of the Human Rights Committee]	272
Questions and Discussion	275
Report of the International Law Commission on the Work of Its Forty-Ninth Session	276
Questions and Discussion	277
B. Denouncing and Reacceding with a Reservation	277
<i>Rawle Kennedy v. Trinidad and Tobago</i>	278
Questions and Discussion	278
C. Limitations and Derogations from Human Rights	279
5. International Human Rights Institutions and Procedures	281
I. Introduction	281
II. The U.N. Charter Bodies	284
A. The Security Council	284
Questions and Discussion	286
B. General Assembly	286
1. The Former Commission and Subcommission	287
2. The Human Rights Council	291
Philip Alston, <i>Reconceiving the U.N. Human Rights Regime: Challenges Confronting the New U.N. Human Rights Council</i>	292
GENERAL ASSEMBLY RESOLUTION 60/251	293
Questions and Discussion	294
Fatma Zohra Ksentini, Special Rapporteur, <i>Review of Further Developments in Fields with Which the Sub-Commission Has Been Concerned: Human Rights and the Environment</i>	295
C. Human Rights Council Special Procedures	297
<i>Special Procedures of the Human Rights Council</i>	297
Questions and Discussion	298
1. Fact-Finding	299
<i>Manual of the United Nations Human Rights Special Procedures</i>	300
Questions and Discussion	303
<i>Report of the Special Rapporteur on the Adverse Effects of the Illicit Movement and Dumping of Toxic and Dangerous Products and Wastes on the Enjoyment of Human Rights</i>	304
Press Release, <i>Toxic Waste: U.N. Expert Releases Report on “Probo Koala” Incident</i>	307
2. Norm Development	307
<i>Report of the Special Rapporteur on the Adverse Effects of the Illicit Movement and Dumping of Toxic and Dangerous Products and Wastes on the Enjoyment of Human Rights</i>	307
Questions and Discussion	317
3. The 1503 Procedure	317
Office of the High Commissioner for Human Rights, <i>Human Rights Council Complaints Procedure</i>	317
Questions and Discussion	319
4. The 1235 Procedure	320
5. The Role of Nongovernmental Organizations	320

C. International Court of Justice	320
D. The Secretariat	321
E. Economic and Social Council	322
III. The Treaty Committees	322
A. Introduction	322
Questions and Discussion	327
B. Committee Complaints Procedures	328
1. General Procedures	328
Office of the High Commissioner for Human Rights, <i>Fact Sheet</i> No. 7/Rev. 1, <i>Complaints Procedure</i>	328
2. Human Rights Committee	333
Office of the High Commissioner for Human Rights, <i>Fact Sheet</i> No. 7/Rev. 1, <i>Complaints Procedures</i>	333
IV. Regional Systems	335
A. The European Human Rights System	336
Thomas Buergenthal, <i>The Evolving International Human Rights</i> <i>System</i>	336
Questions and Discussion	338
B. The American Human Rights System	339
Thomas Buergenthal, <i>The Evolving International Human Rights</i> <i>System</i>	339
Questions and Discussion	341
<i>Interpretation of the American Declaration of the Rights and</i> <i>Duties of Man Within the Framework of Article 64 of the</i> <i>American Convention on Human Rights</i>	342
Questions and Discussion	343
1. Economic and Social Rights (Including Environmental Rights) in the American Human Rights System: Applicable Norms	343
Article 26 – Progressive Development, American Convention on Human Rights	344
Matthew Craven, <i>The Protection of Economic, Social, and</i> <i>Cultural Rights Under the Inter-American System of Human</i> <i>Rights</i>	344
Question and Discussion	346
2. Environmental Rights	347
ARTICLE 11 – RIGHT TO A HEALTHY ENVIRONMENT, ADDITIONAL PROTOCOL TO THE AMERICAN CONVENTION ON HUMAN RIGHTS IN THE AREA OF ECONOMIC, SOCIAL, AND CULTURAL RIGHTS	347
Questions and Discussion	347
C. The African Human Rights System	348
Thomas Buergenthal, <i>The Evolving International Human Rights</i> <i>System</i>	348
1. The Banjul Charter	350
African [Banjul] Charter on Human and Peoples' Rights, 1982	350
Questions and Discussion	351
2. The Work of the African Commission on Human and Peoples' Rights and the Environment	351

3.	The Relationship Between the New Court and the Commission Coalition for an Effective African Court on Human and Peoples Rights, <i>About the African Court</i>	352
	AFRICAN [BANJUL] CHARTER ON HUMAN AND PEOPLES' RIGHTS	353
	Protocol to the African Charter on Human and Peoples' Rights on the Establishment of the African Court on Human and Peoples' Rights	354
	Questions and Discussion	355
6.	Procedural Human Rights and the Environment	356
I.	Introduction	356
II.	Access to Environmental Information	357
A.	Environmental Instruments and Jurisprudence	357
B.	Human Rights Texts and Jurisprudence	358
	<i>Case of Bladet Tromsø & Stensaas v. Norway</i>	360
	Questions and Discussion	368
	<i>Claude Reyes et al. v. Chile</i>	369
	Questions and Discussion	380
III.	The Right to Public Participation in Decision Making	381
A.	Environmental Instruments	381
B.	Human Rights Texts	382
IV.	The Rights of Access to Justice and to a Remedy for Environmental Harm	383
A.	The Right to a Remedy in Human Rights Instruments	383
	<i>Okyay et al. v. Turkey</i>	385
	Questions and Discussion	391
B.	The World Bank Inspection Panel	393
	World Bank Inspection Panel, <i>Investigation Report, Ghana: West African Gas Pipeline Project</i>	394
	Questions and Discussion	407
V.	The Aarhus Convention and Complaints Procedure	408
	Convention on Access to Information, Public Participation in Decision Making, and Access to Justice in Environmental Matters	408
	REPORT OF THE COMPLIANCE COMMITTEE ON ITS SIXTEENTH MEETING	418
	REPORT OF THE COMPLIANCE COMMITTEE ON ITS EIGHTEENTH MEETING	429
	Ole W. Pedersen, <i>European Environmental Human Rights and Environmental Rights: A Long Time Coming?</i>	429
	Questions and Discussion	430
VI.	A Combined Process: Prior Informed Consent	431
	World Bank Information Center, <i>Rebuked by Internal Investigation, World Bank Plans to Do More in DRC Forest Sector, but Will It Do Better?</i>	432
	Questions and Discussion	435

7. Substantive Human Rights and the Environment	436
I. Introduction	436
II. The Rights to Life and Health	436
<i>Convention on the Rights of the Child</i>	437
A. U.N. Jurisprudence and Practice	438
Questions and Discussion	439
<i>Brun v. France</i>	440
B. Regional Jurisprudence	443
<i>Öneryildiz v. Turkey</i>	445
Questions and Discussion	456
C. National Jurisprudence	457
<i>Clean Air Foundation Limited & Gordon David Oldham v.</i>	
<i>Government of the Hong Kong Special Administrative Region</i>	457
<i>Mehra v. Union of India et al.</i>	460
Questions and Discussion	462
III. A Right to Water	463
A. Human Rights Law at the Global Level	464
U.N. Development Programme, Human Development Report	
2006, Beyond Scarcity: Power, Poverty, and the Global Water	
Crisis	464
Human Rights Council, Report of the U.N. High Commissioner	
for Human Rights on the Scope and Content of the Relevant	
Human Rights Obligations Related to Equitable Access to Safe	
Drinking Water and Sanitation Under International Human	
Rights Instruments	467
Questions and Discussion	471
<i>Comments of the Committee on Economic, Social, and Cultural</i>	
<i>Rights</i>	472
B. The Organization of American States	473
The Situation of Human Rights in Cuba, Seventh Report	473
C. The African Commission on Human and Peoples' Rights	475
Questions and Discussion	476
D. National Water Rights	476
John Scanlon, Angela Cassar, & Noemi Nemes, <i>Water as a</i>	
<i>Human Right?</i>	476
Stephen Hodgson, <i>Modern Water Rights: Theory and Practice</i>	477
Questions and Discussion	486
IV. Right to Respect for Privacy, Family Life, and Home	487
Questions and Discussion	490
<i>López Ostra v. Spain</i>	490
Questions and Discussion	494
<i>Kyrtatos v. Greece</i>	495
Questions and Discussion	499
<i>Taşkın et al. v. Turkey</i>	500
Questions and Discussion	502
<i>Fadeyeva v. Russia</i>	503
Questions and Discussion	511

V. Right to Property	512
<i>Metropolitan Nature Reserve v. Panama</i>	513
Questions and Discussion	515
<i>Lars and Astrid Fägerskjöld v. Sweden</i>	515
Questions and Discussion	517
VI. The Right to a Healthy or Safe Environment	519
A. International Guarantees	519
B. National Guarantees of the Right to a Safe and Healthy Environment	520
Ole W. Pedersen, <i>European Environmental Human Rights and Environmental Rights: A Long Time Coming?</i>	520
1. The United States	521
<i>Montana Environmental Information Center et al. v. Department of Environmental Quality</i>	523
Questions and Discussion	530
Comment: Litigating State Constitutional Protections	530
2. South Africa	532
<i>Fuel Retailers Association of Southern Africa v. Director-General Environmental Management, Department of Agriculture, Conservation and Environment, Mpumalanga Province et al.</i>	532
Questions and Discussion	543
8. Indigenous Peoples, Rights, and the Environment	545
I. Introduction	545
II. Theoretical Approaches	545
Benedict Kingsbury, <i>Reconciling Five Competing Conceptual Structures of Indigenous Peoples' Claims in International and Comparative Law</i>	545
Questions and Discussion	557
III. International Instruments	557
INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS	558
U.N. Declaration on the Rights of Indigenous Peoples	558
CONVENTION (No. 169) CONCERNING INDIGENOUS AND TRIBAL PEOPLES IN INDEPENDENT COUNTRIES	564
Questions and Discussion	567
IV. The ICCPR and Minority Rights	567
Human Rights Committee, General Comment No. 12: The Right to Self-Determination of Peoples	567
General Comment No. 23: The Rights of Minorities	568
<i>Ominayak and the Lubicon Lake Band v. Canada</i>	569
Questions and Discussion	573
<i>Apirana Mahuika et al. v. New Zealand</i>	573
V. The OAS and the Development of <i>Sui Generis</i> Rights	577
Report on the Situation of Human Rights in Ecuador	577
<i>Mayagna (Sumo) Awas Tingni Community v. Nicaragua</i>	580
Questions and Discussion	584
<i>Case of the Saramaka People v. Suriname</i>	586
Questions and Discussion	602

VI. African Regional Law	602
VII. National Laws and Jurisprudence	610
A. Australia	610
<i>Mabo et al. v. Queensland (No. 2)</i>	610
Questions and Discussion	623
B. The United States	623
<i>Mary and Carrie Dann v. United States</i>	626
Questions and Discussion	639
C. Botswana	640
<i>Sesana and Others v. Attorney General, High Court</i>	640
VIII. Indigenous Rights in Environmental Agreements	652
A. The Convention on Biological Diversity	652
Bonn Guidelines on Access to Genetic Resources and Fair and	
Equitable Sharing of the Benefits Arising out of Their	
Utilization	653
Questions and Discussion	659
B. Climate Change, Reducing Emissions from Deforestation in	
Developing Countries, and Forest Peoples	659
United Nations Collaborative Programme on Reducing	
Emissions from Deforestation and Forest Degradation in	
Developing Countries	659
Friends of the Earth, <i>REDD Myths: A Critical Review of Proposed</i>	
<i>Mechanisms to Reduce Emissions from Deforestation and</i>	
<i>Degradation in Developing Countries</i>	661
9. Humanitarian Crises: Armed Conflicts and Other Disasters	666
I. Introduction	666
Elizabeth Ferris, <i>Natural Disaster and Conflict-Induced</i>	
<i>Displacement: Similarities, Differences, and Inter-Connections</i>	666
II. Human Rights, the Environment, and Armed Conflict	670
A. The Relationship of Humanitarian Law to Human Rights Law	671
Statement by Emanuela-Chiara Gillard, ICRC Legal Adviser	671
Legal Consequences of the Construction of a Wall in the	
Occupied Palestinian Territory	673
Questions and Discussion	677
B. The Role of Natural Resources and the Environment in Armed	
Conflicts	678
<i>From Conflict to Peacebuilding: The Role of Natural Resources</i>	
<i>and the Environment</i>	678
Questions and Discussion	681
C. The Law of Armed Conflict	681
Protocol Additional to the Geneva Conventions of 12 August 1949,	
and Relating to the Protection of Victims of International	
Armed Conflicts (Protocol 1)	684
Antoine Bouvier, <i>Protection of the Natural Environment in Time</i>	
<i>of Armed Conflict</i>	688
Questions and Discussion	691