
Book Reviews

- COMPENDIUM OF SUMMARIES OF JUDICIAL DECISIONS IN ENVIRONMENT RELATED CASES (WITH SPECIAL REFERENCE TO COUNTRIES IN SOUTH ASIA) Edited by Donald Kaniaru, Lal Kurukulasuriya and Prasantha Dias Abeygunawardne (SACEP/UNEP/NORAD Publication Series on Environmental Law and Policy No. 3, South Asia Co-operative Environment Programme, Colombo: 1997) ISBN 955-8074-01-2; xxix+243pp; Appendices; Gratis

The South Asian region, comprising India, Pakistan, Nepal, Bangladesh, Sri Lanka, Bhutan and the Maldives, has witnessed a significant development in environmental and human rights jurisprudence in the last two decades. A notable feature of this expansion is that it has been in large part, due to the public interest litigation initiated by organisations, lawyers and other individuals who use the legal process and the courts as a method by which to promote sustainable development and safeguard the environment. These efforts have been amply supported by the creative judicial decisions handed down by the courts, particularly the appellate courts in these countries.

Formal links have been promoted across South Asia with the establishment of SAARC – the South Asian Association for Regional Co-operation. SAARC has facilitated extensive cooperation among its member countries not only at governmental level but also among professional organisations, NGOs and others and this inter-action extends to the environmental and human rights arena. Close links are also maintained by environmental lawyers across the region who monitor legal developments in other countries and try to apply them in their own. This has resulted in far reaching cross fertilisation of such developments.

A manifestation of this interaction was the Regional Symposium on the Role of the Judiciary in Promoting the Rule of Law in the Area of Sustainable Development held in Colombo, Sri Lanka from 4–6 July 1997 organised by the South Asia Co-operative Environment Programme (SACEP) together with the United Nations Environment Programme (UNEP). It brought together superior court judges from the South Asian countries, many of whom have been at the forefront of judicial activism in this area of law. Although the primary focus of the Symposium was on South Asia, participants from several other countries as well as institutions such as IUCN, UNEP and the World Bank also attended.

The Moderator of the Symposium, His Excellency Judge Christopher G. Weeramantry, Vice President of the International Court of Justice at the Hague, observed in his Foreword to the publication:

The Conference revealed that the judiciary of the SAARC region is in the vanguard of judicial efforts to come to terms with these problems. Indeed, participants at the Conference,

hailing from regions as far afield as America and Australia, observed that the judiciary in the SAARC countries probably leads the world in this field (at vii–viii).

Judge Weeramantry goes on to point out that many of these problems are unprecedented and therefore it is important that the judges of one country should be aware of the issues facing their fellow judges in other countries and of how these issues have been addressed by them. He cites several areas where uncertainty prevails – in the procedural area regarding how environmental courts can be set up or special environmental jurisdictions created, how class actions and public interest litigation can be encouraged and how public participation can be stimulated. At the conceptual level he poses such questions as “how have our courts used constitutional provisions and human rights to help in developing a body of environmental protections and principles?” (at ix). He draws attention to the concept of inter-generational equity and principles such as the polluter pays and the precautionary principle. He also points out that environmental impact assessment is in need of judicial development “to suit the particular needs of our region” (at ix).

This publication was one of the outcomes of this Symposium. In the Introduction, the editors state that the objective of the Symposium was:

[T]o review the role played by the Courts of Law especially in the South Asian countries, in developing this new branch of jurisprudence, and to establish a regional network of, among others, Judges and Lawyers in the region for the expeditious and effective dissemination of legal information on environment and development, including judicial decisions (at xi).

They further state that the objective of the Compendium is first, to provide “an overview of the thrust of judicial decisions, especially in the South Asian countries on environmental matters” (at xii). Its purpose is to provide “a flavour of the trend in recent judicial decisions in South Asia and beyond” (at xii) which will contribute to promoting law as a means of translating environment and development policies into action at the national and international levels.

The Compendium has quite successfully achieved its stated purpose. It is a useful pool of information on significant judicial decisions in South Asia as well as several other countries and at the international level. According to the Editors’ Introduction, the full texts of the cases are available with the Secretariats of SACEP and UNEP and will be published under the SACEP/UNEP/NORAD Environmental Law and Policy Publications Series which is expected to be released in late 1998.

The publication has been structured in such a manner as to enable the reader to both find very easily a decision on the particular subject matter as well as to browse through the cases country by country. The cases have been divided into five sections, namely South Asia, South East Asia, Australia, Other Countries and International. An “Index by Subject Matter” permits the reader to identify at a glance which case deals with which particular legal issue. Each case is not more than two or three pages in length and the relevant legal issue has been extracted

from each one and compressed into the bare minimum in length. Each case has been generally divided into four parts:

1. "Introduction" – stating the facts of the case;
2. "Legal Framework" – citing the constitutional or statutory provision in issue;
3. "Held" – giving the bare essence of the relevant portions of the judgment; and
4. "Cases Cited" – a list of the case law which was presumably cited in the course of the litigation.

The difficulty with this structure is that the "Legal Framework" only provides the name and the relevant section of the statute in question and a reader who is unaware of its content would, in many instances, find it difficult to understand the judgment in relation to it.

This reviewer was also sometimes puzzled as to how the cases were demarcated in the Index. For example under the topic "Land and Environment Court" three cases from Australia have been cited. However, on reading the three cases, apart from the fact that all three were heard in the Land and Environment Court of New South Wales, there does not seem to be any particular significance in the topic under which they have been listed. This, unfortunately, makes it somewhat confusing. Further, some cases that have been indexed under a particular topic do not show the relevance of that topic in the text. For instance the *Oleum Gas Leak Case III* (at 59) ¹ has been indexed under "Locus Standi" but the extract of the case does not show the reader how the issue of *locus standi* was addressed by the court.

Many of the issues raised by Judge Weeramantry in his Foreword are addressed in the cases included in this publication. Concepts and principles such as the polluter pays principle, intergenerational equity, the precautionary principle, the issue of public participation, the public trust doctrine and the right to information have been illustrated with judicial decisions on the issue. More specific topics such as litigation relating to pollution, rock quarries, the ban on import of hazardous waste, chemical industrial plants, and dam constructions, have also been included in the collection and these would be helpful to environmental lawyers facing these specific issues in their own countries.

On reading through the book it is also interesting to note the amount of constitutional jurisprudence which has emerged in South Asia in relation to issues of environment and development. In Pakistan, India and Bangladesh the constitutional right to life has been interpreted to include the right to a safe and healthy environment and this has had far reaching impacts. Several other South Asian cases also show how the fundamental rights provisions in the constitutions of these countries have been used to litigate environmental issues. Many of these cases have

1 M. C. Mehta v. *Shriram Food and Fertilizer Industries and Union of India* (1987) A.I.R. (All India Reports) (SC) 1026 (India).

been initiated by way of public interest litigation by organisations and individuals. Therefore the issue of *locus standi* has also been an important factor and several cases illustrate how the courts have handled it.

The *Compendium* is useful as a primary source of reference and as an overview of case law relating to the environment and it has largely achieved the purpose for which it was intended. However, the reader would look forward to the publication of the complete texts of the cases contained in it.

CAMENA GUNERATNE
Regional Editor

- INTERNATIONAL BOUNDARIES AND ENVIRONMENTAL SECURITY Edited by Gerald Blake, Chia Lin Sien, Carl Grundy-Warr, Martin Pratt and Clive Schofield (Kluwer Law International, London: 1997) ISBN 90-411-0669-3; 392pp; US\$140.00

In the 1920s and 1930s, a Canadian industrial plant, located within ten miles of the United States-Canada border, emitted a considerable quantity of contaminants, some as fumes, and some of which entered the Columbia River. These contaminants ultimately flowed downstream or drifted in the air into the United States, where they were responsible for damage to the agricultural output of American farmers. Since the *Trail Smelter Arbitration*,¹ international law has recognised that a State bears responsibility for environmental damage that originates within its territory that adversely impacts upon other States. At no stage, did the Arbitral Tribunal question that the act of polluting the environment was contrary to international law, rather the escape of that pollution across an international boundary amounted to an interference with the sovereignty of another State, and gave rise to an obligation to take remedial action. This landmark international environmental law case illustrates the importance of international boundaries to transnational regional and global environmental protection. In recent years, many works considering the content of international environmental law have approached the subject in the context of the mechanisms necessary to protect the environment from damage, and downplay the importance of boundaries. *International Boundaries and Environmental Security: Frameworks for Regional Cooperation* is a collection of papers that recognises the importance of boundaries in international environmental protection, and considers the impact of boundaries on efforts to regulate human activities in a wide variety of situations.

The book is drawn from the proceedings of a conference held in Singapore in June 1995, although it is apparent that many of the papers have had the benefit of revisions and updating since that time. The book is divided into three parts, with the intention to consider the three basic types of border: maritime, land and riverine. The first section examines maritime boundaries and environmental security.

1 (1941) 35 *American Journal of International Law* 698.