Editorial

The year 2017 has seen some significant strides being taken in the development of concepts and principles of environmental law at an international level. One of the more significant of these is the preparation of a draft *Global Pact on the Environment*, which was initiated by the French Club des Juristes in late 2016, debated in Paris in June 2017 by a wide range of legal and other experts, and the subject of a further gathering in New York in September 2017.¹ Of course, as with many other areas of international law, such initiatives build on both recent ideas as well as historical development of principles and concepts that can stretch back many years. The draft Pact incorporates concepts from the Universal Declaration of Human Rights² and the Human Rights Covenants,³ as well as the declarations of the successive United Nations conferences on environment and development,⁴ and instruments emanating from bodies such as the International Union for Conservation of Nature.⁵ The Sustainable Development Goals⁶ are a further example of the continuing endeavour to set targets for the achievement of bold and vital environmental objectives. The development of such documents continues apace, with principles relating to

- 1 Conference on the Global Pact for the Environment, <<http://ccsi.columbia.edu/2017/09/20/conference-on-the-global-pact-for-the-environment/>> accessed 14 November 2017.
- 2 Universal Declaration of Human Rights General Assembly Resolution 217 A(III) of 10 December 1948.
- 3 International Covenant on Economic, Social and Cultural Rights, 16 December 1966, 993 UNTS 3 and International Covenant on Civil and Political Rights, 16 December 1966, 999 UNTS 171.
- 4 See the 1972 Stockholm Declaration on the Human Environment, U.N. Doc. A/Conf.48/14/Rev. 1(1973); 11 ILM 1416 (1972); and the 1992 Rio Declaration on Environment and Development UN Doc. A/CONF.151/26 (vol. I); 31 ILM 874 (1992).
- 5 These include but are not limited to the 2015 Draft Covenant on Environment and Development, at <<https://www.iucn.org/content/draft-international-covenant-environment-and-development>>; the 2015 Oslo Principles on Climate Change Obligations at <https://law.yale.edu/system/files/area/center/schell/oslo_principles.pdf>; the 2016 IUCN World Declaration on the Environmental Rule of Law, at <<https://www.iucn.org/commissions/world-commission-environmental-law/events/27-29-april-2016-world-environmental-law-congress>>; all accessed on 13 November 2017.
- 6 United Nations *Sustainable Development Goals*, <<http://www.un.org/sustainabledevelopment/sustainable-development-goals/>> accessed 13 November 2017.

the climate obligations of enterprises agreed and published by year's end.⁷ The emerging concept of the Environmental Rule of Law also continued to be debated. The Organisation of American States, the World Commission on Environmental Law (WCEL), the Global Judicial Institute on the Environment and UN Environment partnered with the Supreme Court of Chile and others at a major conference in September 2017, where they 'discussed key issues to further contribute to achieving IUCN-WCEL goals related to the progressive development of legal and policy regimes built on the core principles of the Environmental Rule of Law.'⁸

In addition, we are anticipating the concluding reports of the Special Rapporteur on Human Rights and Environment, whose work has already influenced some of the recent documents cited here. Already the draft guidelines on human rights and the environment⁹ issued by the Special Rapporteur in October 2017, are a robust statement of the general obligation of states 'to prevent, reduce and remedy environmental harm that interferes with the full enjoyment of human rights', while the substantive and procedural obligations spelled out in the document would make it incumbent on states to set up mechanisms through legislation, policies and institutions to ensure that meeting environmental and human rights obligations are dealt with in a unified framework. This striving to promote and develop environmental law concepts represents the very essence of what legal research and scholarship is about, and is reflected in various ways in the articles and notes included in this second issue of the *Chinese Journal of Environmental Law*.

The first article in this issue, 'Role of the South in the Development of International Environmental Law' underlines the importance of being aware of the historical development of the modern environmental law principles and concepts mentioned above. The author, Parvez HASSAN, the former Chair of the IUCN World Commission on Environmental Law, has been centrally involved in many of the debates around the world on environmental law for the

7 See Jaap SPIER, (ed) *Principles on Climate Change Obligations of Enterprises* (Eleven International Publishing, 2017); see also Climate Principles for Enterprises, <https://climateprinciplesforenterprises.org/> accessed 22 December 2017.

8 2nd Inter-American Congress on the Environmental Rule of Law Convenes in Santiago (Chile), at < <https://www.iucn.org/news/world-commission-environmental-law/201710/2nd-inter-american-congress-environmental-rule-law-convenes-santiago-chile> > accessed 15 November 2017.

9 See call for inputs: Draft Guidelines on Human Rights and the Environment, at < <http://www.ohchr.org/EN/Issues/Environment/SREnvironment/Pages/SREnvironmentIndex.aspx> > accessed 14 November 2017.

past few decades. He draws lessons from the evolution of universal international law, observing that in the post-colonial era, the newly emerging and independent states of Asia and Africa, supported by the developing world in South America, questioned the validity and legitimacy of norms of international law. Those norms were perceived to serve only the interests of the developed Western nations and were seen to be alien to the aspirations of the developing countries. Dr HASSAN shows that international law has evolved from that base with a willingness to accept the viewpoint of new participants in global law-making processes. He observes that the interests of developing countries in the realm of international environmental law have been assimilated, in the same way as with other international law regimes (human rights, the permanent sovereignty issues, diplomatic and consular immunities, seas and oceans, and the law on treaties). A key message advanced by the author is that the ultimate strength of international law is the commonality and synthesis of the interests of all states, rich and poor, agricultural and industrial. He concludes that the contribution of developing countries to the development of international environmental law through their participation in conferences, negotiation of treaties and soft law texts, adds immeasurable strength to the current state and future development of international environmental law.

The second article, by Jeanette JENSEN and Alex GARDNER of the University of Western Australia, canvasses a challenging task that often confronts international lawyers, namely ascertaining the legal enforceability of stated convention obligations. The authors focus on the Ramsar Convention (Ramsar) and, to a lesser extent, on the Convention on Biological Diversity (CBD) to ascertain whether these conventions impose an obligation to restore wetlands through environmental water allocations. Their investigation is framed within the context of the growing world-wide recognition that many wetlands and waterways urgently require significant restoration and that freshwater management should become the principal environmental priority due to the enormous risks to which freshwater resources and ecosystems are subjected. They observe that both conventions contain a general obligation to restore, although one which appears rather uncertain, due to either the disputable status of the language of the text (Ramsar) or the qualifying language expressing it (CBD). Nevertheless, they view the Ramsar obligation as amounting to a legal obligation that is potentially enforceable in the International Court of Justice against another contracting party, though the authors acknowledge and address the practical difficulties associated with its enforcement. They contend that restoration goals are, in fact, achievable through Convention

amendments, including a clear obligation to restore degraded wetlands to a defined baseline. They also offer an alternative solution by way of introducing an additional protocol, in respect of which they make concrete proposals. They conclude that their proposals would address important aspects of the criticisms of the Ramsar Convention.

The third article, by Richard ZHANG Qing and Benoit MAYER of the Chinese University of Hong Kong, concentrates on very recent developments in the area of public interest environmental litigation in China. The 2015 *Environmental Protection Law* (EPL), along with amendments to related legislation, has opened the door to non-government organisations to initiate public interest litigation concerning the activities of industrial and other actors engaged in activities that result in harm to the environment. The article assesses the success of implementation of the 'standing' reforms. The authors base their analysis on a variety of primary and secondary sources, and document virtually all cases filed in the courts in the first 30 months of the introduction of the EPL. The authors recognize various limitations of the recent reforms and the need for improvement, especially concerning access to courts and the difficulties of enforcement of judgments. They conclude that while the future of public interest environmental litigation is promising, possible future refinements of the current statutory framework can be identified. This article is one of a number published in recent times that demonstrates the rapid development of this new field of litigation.¹⁰ As judges in the special environmental divisions of the Chinese courts gain more experience and more law firms specialise in the field, we can expect the academic analyses of public interest environmental litigation to grow.

In the final article, 'Biodiversity Conservation of the Third Pole: Potential Lessons from the Mekong Basin', Simon MARSDEN of the University of Stirling examines the viability of developing a transboundary environmental management regime focused on biodiversity conservation in relation to the Third Pole, which covers the Himalayas and Tibetan Plateau. The global ecological significance of this region lies in the fact that it contains more snow and ice than anywhere in the world outside the polar regions, as well as the largest reserve of freshwater beyond the polar regions. In his analysis, he draws on examples of regional environmental management frameworks such as the Alpine Convention

10 See eg, Kathryn MCCALLUM, 'Changing Landscapes: enforcing environmental laws in China through public interest litigation' (2017) 20 *Asia Pacific Journal of Environmental Law* 57; and SUN Qian and Jack TUHOLSKE, 'An Exploration of and Reflection on China's System of Environmental Public Interest Litigation' (2017) 47 *ELR* 10497.

and the Carpathian Convention, and then uses the transboundary legal framework applicable to Mekong River as an example to draw out the benefits as well as the pitfalls for the establishment of a Third Pole biodiversity regime. His central argument is that there is a clear need in the Third Pole region to improve collaborative governance and planning frameworks to contend with the challenges of climate change, dam development, water management, resource extraction, infrastructure development and recognition of Indigenous/minority rights. He contends that the Mekong River Basin regime has failed to effectively deal with biodiversity, due to the low emphasis placed on transboundary environmental management of the basin, the lack of assessment of transboundary environmental effects of development activities, notably hydropower dams, and the inadequate efforts to involve communities and non-government organisations appropriately in decision-making processes, including environmental assessment. He observes that these failures must serve as a major lesson in the design of any Third Pole regime. He suggests that an appropriate biodiversity conservation instrument for the region could take the form of a protocol relating to a framework convention, with both needing to be developed from the ground up, drawing on the recognized needs of the relevant stakeholders for both environmental protection and equitable utilization.

Our Notes on Recent Developments reflect our concern to report on both practical developments and research initiatives from around the Asian region and around the world, both from academic researchers as well as international institutions and organisations.

The note by Alice MAH and Xinhong WANG of Warwick University reports on their ongoing sociological research around the concept of environmental justice. Their work forms part of a five-year European Research Council-funded project focused on 'the contested politics of making scientific claims about the health impacts of pollution.' The project focuses on the global petrochemical industry as a significant source of pollution, with unequal regulations and risks across different countries and populations. They critically review how the concept is being increasingly used in the Chinese context, and observe that it resonates with 'shared ideas of social justice within Chinese legal traditions.'

The note by Andy RAINE and Luan HARFORD records the recent initiatives undertaken in the region on the promotion of various aspects of environmental law by UN Environment. They report on the work in 'climate proofing' legal frameworks, strengthening legislation concerning wildlife crime as well as the illegal trade in chemicals and waste. Importantly, they also discuss the work being conducted by UN Environment to encourage new partnerships between various stakeholders, including legislators, judges, multi-lateral development banks, civil society organisations, universities and the private sector.

Finally, we thank all those who have given positive feedback on the first issue of CJEL and who continue to support the Journal. We trust that this second issue will also resonate with our readers. Once again, we encourage submission of articles and notes on a broad range of environmental law topics from around the world.

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