Book Review


An important cause of controversy in negotiations of legal commitments in the field of environmental protection is constituted by the fact that developing and developed states are in different positions regarding pollution and damage to the environment. Firstly, developed states have contributed (and still contribute) to global environmental problems on an incomparably larger scale than developing states. Furthermore, it is also obvious that the resources which are required to cope with the various problems are distributed very unequally: In particular, in relation to industrial nations, developing states possess far smaller financial and technological resources which would allow them to take the necessary measures against the causes as well as the consequences of these threats to the environment.

Thus, the question arises firstly, how is the burden, which stems from the protection of the environment and of natural resources, to be distributed; secondly, one has to ask how the different ‘contributions’ of the various states to causing environmental problems are to be taken into account. Here, the principle of common but differentiated responsibilities (CBDR principle) provides a possible normative solution. While this principle starts from a responsibility to be shared by all states for environmental concerns, it also implies that this responsibility cannot unfold the same consequences for all states. At least, this is the concept which is reflected in the definition of the CBDR principle pursuant to Principle 7 of the Rio Declaration, according to which the developed states, in comparison with the developing states, take a larger responsibility for addressing damages to the environment, and in particular for bearing the resulting costs. As for binding international treaties, the CBDR principle plays a particular role in the Convention on Climate Change: According to Article 3 paragraph 1, the industrial nations should take the lead in combating climate change and its negative effects; Article 3 paragraph 2 emphasizes furthermore, that the specific circumstances and needs of developing countries should be given particular consideration. Article 10 of the Kyoto Protocol to the Climate Convention refers to this principle as well, which moreover is most clearly reflected by the fact that only industrial nations are committed to reducing (or limiting) greenhouse gas emissions, while developing parties have no such obligations.

However, the meaning of the principle remains rather unclear with regard to concrete commitments of industrial nations and developing countries respectively, which is in particular the case as to the climate protection regime. Issues such as the non-commitment of developing countries to emissions reduction on the one hand and the actual transfer of financial resources in favour of developing countries on the other are still at the core of serious political differences. The difficult negotiations on the occasion of the last Conferences of the Parties to
the Climate Convention in 2001 and 2002 have shown this once again, notwithstanding the agreements finally concluded in Bonn and Marrakesh.

Against this background, scholarly analysis of the principle of common but differentiated responsibility deserves particular attention. Here, the dissertation by Bettina Kellersmann constitutes probably the most comprehensive research on the subject written so far.

The work is basically set up on the following structure: following some preliminary explanations on the integration of environment and development in the first chapter, the author then defines, based on the explicit mentioning of the CBDR principle in the Rio Declaration and the Climate Convention, her view of the concept of common but differentiated responsibilities which will underlie the further analysis. On this foundation, the following four chapters investigate in detail how the concept has been put into concrete form in several of the most important international treaties aiming at the protection of the environment, i.e. the ozone protection regime (Convention for the Protection of the Ozone Layer with the pertaining Montreal Protocol on Substances that Deplete the Ozone Layer), the climate protection regime (Framework Convention on Climate Change with the Kyoto Protocol), the Convention on Biological Diversity and the Convention to Combat Desertification. The actual aim of these examinations is to find an answer to the question of whether the concept of CBDR has attained the legal status of a customary principle of international law. Thus, the concluding seventh chapter is dedicated to the comparative analysis of the relevant findings in the investigated spheres, finally leading to the author’s verdict in terms of the concept’s legal character. An English summary completes the work.

As already mentioned, an important definition which determines Kellersmann’s work to a great extent is made in the second chapter. Referring to Principle 7 of the Rio Declaration and Article 3 paragraph 1 of the Climate Convention (pp. 41–48), the author sets forth her view of what has to be considered as the central idea of the CBDR concept. According to this, industrial nations must take a leading role in the common protection of the global environment due to their stronger economic capabilities – but not because of their larger contribution to causing environmental problems. Thus, according to the author, as essential for the CBDR concept is the consideration of different levels of economic development, whilst no legal consequences can be drawn from the different contributions of states to the deterioration of the environment (p. 74). So, in particular, the CBDR concept has to be clearly distinguished from the polluter-pays principle, which is based on the idea of responsibility as a result of the contribution to causing a certain harm to the environment. Kellersmann justifies this understanding of the concept primarily by pointing to the unwillingness of industrial nations to establish an explicit link between the CBDR concept and the polluter-pays idea in the relevant legal texts. On the whole, however, it has to be noted that Kellersmann’s argumentation as to her view of the concept’s essential features seems to be rather brief considering the further role of the chosen conceptual perspective.

The following major part of the treatise relates to the concept’s actual acceptance in international legal practice in the above-mentioned environmental fields. Regarding this, the author focuses her analysis on two main criteria which constitute the essential components of the concept developed before, i.e. (1) the asymmetric environmental obligations of developed and developing states respectively and (2) the compliance assistance to be granted to developing states in order to improve their ability to fulfil their respective environmental obligations. These examinations are undertaken in some detail (pp. 79–280); in the present review, however, it is the concluding analysis in the seventh chapter (pp. 281–334) drawn from these considerations which is of special interest.