

**BOOK REVIEW** *Equality Among Unequals in International Environmental Law: Differential Treatment for Developing Countries.* By *Anita Margrethe Halvorsen.*, Westview Press, 1999. Pp. 200.

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**Author:** Karl Ohlsen

**LexisNexis Summary**

... Should all nations be treated equally... or equitably? In her new book, *Equality Among Unequals in International Environmental Law*, *Anita Halvorsen* addresses this growing debate by asking if states with varied resources and capabilities should be subject to equally varied and equitable requirements and obligations. ... Developed nations wished to counteract the environmental degradation imposed on the global environment, while trying to prevent developing nations from further damaging the global ecosystem. ... In her analysis of the sustainable *development* theory, *Halvorsen* recognizes developing nations' preference for economic growth over environmental protection; the needs of the people will always be placed above those of the environment, and even future generations, in poorer nations. ... According to *Halvorsen*, participation by all nations, developed and developing alike, is the key to preventing further environmental harm. ... There are several types of treaty provisions that *Halvorsen* argues will help promote full participation. ... As implementing agencies of environmental protection and sustainable *development* norms, *Halvorsen* proposes that NGOs have two distinct roles. ... The Role of NGOs in Relation to Developing Countries' Participation in Multilateral Environmental Treaties ... *Halvorsen* concludes by stating that the overall trend toward equitable, rather than equal, treatment must continue, and continue to be modified even further, so that individual nations have as much incentive as possible to participate in environmental protection. ...

**Highlight**

As one moves from the level of the ideal to practical social policy, equality is in itself too general a concept to support concrete policy choices. Choices must be made among the different kinds of equality: equality of rights, of opportunities, of conditions, and of outcome. And, these different kinds of equality may be incompatible in practice: indeed, this is likely to be the case when there are disparities in resources and capabilities. That is why, since the time of Plato it has been suggested that "equality among unequals" may be inequitable and that differential treatment may be essential for "real equality."<sup>1</sup>

**Text**

[\*129] Should all nations be treated equally... or equitably? In her new book, *Equality Among Unequals in International Environmental Law*, *Anita Halvorsen* addresses this growing debate by asking if states with varied resources and capabilities should be subject to equally varied and equitable requirements and obligations.<sup>2</sup> This review follows the course of *Halvorsen*'s book, providing a chapter-by-chapter roadmap of her approach to the equity/equality debate, and summarizes her final argument for equitable, incentive-driven treatment of developing nations.

*Equality Among Unequals*' nine chapters can be divided into three distinct sections. The first three chapters outline

<sup>1</sup> Anita Halvorsen, *Equality Among Unequals in International Environmental Law: Differential Treatment for Developing Countries* 28 (1999) (emphasis added by author) (citing Oscar Schachter, *Sharing the World's Resources* 7 (1977)).

<sup>2</sup> See *id.* at 3-4.

the basic problem of inequality, the structure of international law, and the emergence of "sustainable *development*" as an international concept. The next two chapters detail the need to facilitate participation in international [\*130] conventions by developing nations, the barriers that prevent full participation, and some methods to promote greater participation. Finally, the last four chapters detail the role that various non-state participants play in the process, the problems that these participants have encountered, and the methods by which they may take on a greater role in assuring equitable treatment of all nations. Additionally, *Halvorssen* provides a summary of her argument and a general outline of the direction that international environmental law should be taking in the future.

## Introduction

The trend of using differential treatment and responsibilities for developing countries in the form of incentives, such as delayed compliance schedules and technical and financial assistance, in environmental treaties, needs to continue and become part of the framework of international environmental law in order to promote universal participation in the creation and implementation of treaties, ultimately making them more effective.<sup>3</sup>

In the introduction to her book, *Halvorssen* examines the implications of environmental degradation and its global impact.<sup>4</sup> Her view is that in order to counter world-wide environmental degradation, global cooperation must be attained.<sup>5</sup> This includes voluntary cooperation from all nations - those at the early stages of *development* as well as those already developed.<sup>6</sup>

Early efforts at environmental protection were based on a local problem/local solution format.<sup>7</sup> Recently, with the recognition that many environmental harms lack national boundaries, such as the discovery of the rapid depletion of the ozone layer, the increase of greenhouse gases and the resulting warming effect, and the reduction of global biological diversity, local efforts have had to give way to cooperation of the entire global community.<sup>8</sup> As *Halvorssen* notes, modern international [\*131] environmental law has been established to supplement and often replace local efforts in order to address these global concerns.<sup>9</sup>

Initially, international efforts to protect the global environment took two approaches: (1) protection and pollution control, and (2) conservation and management.<sup>10</sup> *Halvorssen* observes that modern scholars of international environmental law are adding another category to these efforts: sustainable *development*.<sup>11</sup>

*Halvorssen* defines sustainable *development* as "the *goal* of integrating environmental and developmental issues in accordance with the Brundtland definition<sup>12</sup> ... and the instruments that resulted from the Rio Conference."<sup>13</sup> This approach recognizes two important factors. First, developing nations view their main *goal* as the attainment of a greater degree of economic and industrial *development*, rather than environmental protection.<sup>14</sup> Second, although developed nations currently account for the vast majority of environmental degradation, the developing nations will

<sup>3</sup> Halvorssen, supra note 1, at 6.

<sup>4</sup> See id. at 1-10.

<sup>5</sup> See id. at 1.

<sup>6</sup> See id. at 3.

<sup>7</sup> See id. at 1. International Environmental Law Anthology 4 (Anthony D'Anato & Kirston Engel eds., 1996).

<sup>8</sup> See id. at 3.

<sup>9</sup> See Halvorssen, supra note 1, at 1.

<sup>10</sup> See id.

<sup>11</sup> See id.

<sup>12</sup> Sustainable development-development that "meets the needs of the present [generation] without compromising the ability of future generations to meet their own needs." Id. at 2 (citing World Commission on Environment and Development, Our Common Future 8 (1987)).

<sup>13</sup> See Halvorssen, supra note 1, at 2.

<sup>14</sup> See id.

soon become the greatest polluters.<sup>15</sup> As these nations develop, the need for economic expansion must be balanced against the need to retain the natural resources so important to their sustenance.<sup>16</sup> It is this conflict that theories of sustainable *development* are designed to address.<sup>17</sup> Similarly, as *Halvorsen* explains throughout her study, it is for this reason that global efforts to prevent further environmental harm must account for developing nations that, as yet, are not as responsible for the current environmental degradation.<sup>18</sup>

*Halvorsen* suggests that the growing use of delayed compliance schedules and other temporary incentives, including technical and financial assistance written into international environmental agreements "is the most effective way to have these countries "buy" into the idea of [\*132] environmental responsibility and to move them forward more quickly on the pathway to sustainable *development*."<sup>19</sup>

In the field of international environmental law, there is a broad spectrum of opinions regarding the treatment of nations still in the early stages of *development*. Bordering this spectrum on one side is the view that all states are to be treated equally, such that no state shall be burdened with a larger or smaller amount of responsibility than any other.<sup>20</sup> On the other side is the view that the economic and technological characteristics of each individual state should be taken into consideration when determining what obligations should be imposed upon that state.<sup>21</sup> *Equality Among Unequals* is a review of the arguments made from the latter perspective. *Halvorsen* reviews various examples of differentiated obligations as used in major international conventions and agreements. She also takes the opportunity to comment on the effectiveness of the obligations and their implementation, providing suggestions as to how the process might be improved. Finally, *Halvorsen* reviews the role of various international institutions and Non-Governmental Organizations (NGOs) as they pertain to the *goal* of sustainable *development* and, perhaps, equality.

## Chapter Two: Background

Since the Stockholm Conference took place, marking the beginning of the modern era of international environmental law, hundreds of international environmental agreements have been adopted. International environmental law has evolved from bilateral to multilateral approaches to address global environmental issues.<sup>22</sup>

Although *Equality Among Unequals* recognizes and explains the structure of forms of international law - including customary international law, general principles of law, subsidiary and academic sources, and "soft law" - its major focus is on multilateral international treaties and conventions. Since this form of international law is one in which the express intent of the nations participating is written, and since its application to the ratifying parties is obvious, immediate, and enforceable, it is the arguably best subject for discussion of international environmental law and its application to developing nations.<sup>23</sup> In [\*133] addition, it is this area of international law that *Halvorsen* feels requires more active participation by developing states.

*Halvorsen* first outlines the evolution of environmental protection as it occurred in international law. In the early to mid-1900s, the growing number of environmental policies adopted by developed nations slowly encroached upon the developmental policies of undeveloped nations.<sup>24</sup> This intrusion culminated in the following statement made by the Sri Lankan ambassador to the United Nations in 1970:

<sup>15</sup> See *id.* at 2-3.

<sup>16</sup> See *supra* note 8, at 7.

<sup>17</sup> See *id.*, at 25.

<sup>18</sup> *Halvorsen*, *supra* note 1, at 67.

<sup>19</sup> *Id.* at 4.

<sup>20</sup> See *supra* note 8, at 43.

<sup>21</sup> See *id.* at 6-7.

<sup>22</sup> *Id.* at 22.

<sup>23</sup> See *id.* at 11-12.

<sup>24</sup> See *id.* at 18-20.

Developing countries have of late been warned of the price that has to be paid in the form of environmental pollution for industrial *development*. All developing countries are aware of the risks, but they would be quite prepared to accept from the developed countries even 100 percent of their gross national pollution if thereby they could diversify their economies through industrialization.<sup>25</sup>

This statement, according to *Halvorssen*, foreshadowed the growing problem presented to international environmental law in the following three decades.<sup>26</sup> Developed nations wished to counteract the environmental degradation imposed on the global environment, while trying to prevent developing nations from further damaging the global ecosystem.<sup>27</sup> Developing nations, while empathizing with this perspective, remained unwilling to sacrifice their own economic progress and freedom to help counter problems caused by developed nations' negligence.<sup>28</sup> Both sides recognized the need for global cooperation, as illustrated by the participation of representatives from many nations - developed and developing - in the Stockholm Conference of 1972.<sup>29</sup> However, *Halvorssen* observes the differing methods proposed by each side to accomplish this global cooperation.

Prior to the Stockholm Conference, international environmental agreements generally failed to give special treatment to developing [\*134] nations.<sup>30</sup> Developed nations had no desire to allow others to pollute while they had to cut back.<sup>31</sup> Conversely, developing nations did not wish to be held to the same standards as developed nations, mainly because to be so held would cripple their economic growth, and because they felt little responsibility for the current environmental crisis.<sup>32</sup> The problem inherent within these stances, as *Halvorssen* illustrates, is that, while the developed nations are currently responsible for a vast majority of environmental degradation, developing nations continuing at their current growth rate will quickly catch and surpass the developed nations in total pollution and degradation.<sup>33</sup> Therefore, the question presented is: how should the differences between the developing nations and those already developed be addressed when approached in multilateral treaties and conventions on the environment?<sup>34</sup>

### Chapter Three: Sustainable *Development*

Sustainable *development* could be described as representing a compromise between economic interests and environmental interests. "Business as usual," meaning economic growth with no restraints, can no longer continue, given the limits to the capacity of the global environment to accommodate ever-increasing resource use.<sup>35</sup>

### Integrating Environment and *Development*

Sustainable *development* first came into vogue as an international concept after the issuance of the Brundtland Com-

<sup>25</sup> Id. at 21 (citing Leonard, H. Jeffrey & David Morell, *Emergence of Environmental Concern in Developing Countries: A Political Perspective*, 17 *Stan. J. Int'l L.* 281 (1981)).

<sup>26</sup> See *Halvorssen*, supra note 1, at 21.

<sup>27</sup> See Anthology, supra note 4, at 6-7.

<sup>28</sup> See *Halvorssen*, supra note 1, at 21.

<sup>29</sup> See generally Stockholm Declaration on the Human Environment, United Nations Conference on the Human Environment, U.N. Doc. A/CONF.48/14/Rev.1 (1973), reprinted in 11 *I.L.M.* 1416. Over 115 nations participated in the Stockholm Conference, including many representatives from fully industrialized nations, industrializing nations, and non-industrialized nations.

<sup>30</sup> See *Halvorssen*, supra note 1, at 3.

<sup>31</sup> See id. at 21.

<sup>32</sup> See id. at 29-30.

<sup>33</sup> See id. at 3.

<sup>34</sup> See id. at 27-28.

<sup>35</sup> Id. at 42.

mission Report was 1987.<sup>36</sup> The Report defined the concept as "development that meets the needs of the present without compromising the ability of future generations to meet their own needs."<sup>37</sup> Although sustainable development includes limitations on development to protect the environment, its main priority is fulfilling the needs of the poor.<sup>38</sup>

[\*135] Sustainable development has been described as the perfect blend of environmental protection and economic and industrial development.<sup>39</sup> Although no general consensus exists as to how sustainable development can be achieved, its recent inclusion in multilateral international conferences and conventions shows a general agreement that it is a worthwhile goal to strive toward.<sup>40</sup> The importance of this theory is that it allows developing nations to progress economically, so that they may address their current needs, while still compelling sufficient regulation to meet future needs.<sup>41</sup> In her analysis of the sustainable development theory, Halvorssen recognizes developing nations' preference for economic growth over environmental protection;<sup>42</sup> the needs of the people will always be placed above those of the environment, and even future generations, in poorer nations.<sup>43</sup>

#### Legal Aspects of the Concept of Sustainable Development

Equality Among Unequals outlines four legal aspects of sustainable development. Agenda 21<sup>44</sup> and the Rio Declaration<sup>45</sup> further adopt these principles. They are:

1) the commitment to preserve natural resources for present and future generations, 2) appropriate standards for the exploitation of natural resources, 3) equitable use of natural resources, taking into account the needs of other States and peoples, and 4) requiring that environmental considerations be integrated into economic and other development plans and that development needs be taken into account in the use of environmental measures.<sup>46</sup>

[\*136] Halvorssen would add international accountability to that list, providing an obligation for states to consider harm to other nations that might occur when using their natural resources.<sup>47</sup>

#### Intragenerational and Intergenerational Equity

One of the key principles of sustainable development is the dual concept of intragenerational equity and intergenerational equity. Halvorssen advocates the theory of Edith Brown Weiss, which states that preserving natural resources for all generations, current and future, should be considered a key component of international law.<sup>48</sup> Currently, developing nations are experiencing difficulty in trying to attain intragenerational equity.<sup>49</sup> Ensuring that development proceeds at a rate that benefits all of a nation's current generation costs a great deal, in both time and

<sup>36</sup> See id. at 41.

<sup>37</sup> Id. (citing World Commission on Environment and Development, *Our Common Future* 8, 43-46 (1987)).

<sup>38</sup> See id. at 41.

<sup>39</sup> See id. at 41 (citing Lynton Caldwell, *International Environmental Policy* 200, 201 (1990)).

<sup>40</sup> See generally Halvorssen, *supra* note 1, at 41-43.

<sup>41</sup> See Anthology, *supra* note 4, at 26.

<sup>42</sup> See Halvorssen, *supra* note 1, at 42, 48.

<sup>43</sup> See id. at 60.

<sup>44</sup> See U.N. Conference on Environment and Development, Agenda 21, U.N. Doc. A/CONF.151/4 (1992), reprinted in *The Earth Summit: The United Nations Conference on Environment and Development* 125-508 (Stanley P. Johnson ed., 1993).

<sup>45</sup> See Rio Declaration on Environment and Development, United Nations Conference on Environment and Development, U.N. Doc. A/CONF.151/5/Rev.1 (1992), reprinted in 31 I.L.M. 874.

<sup>46</sup> See Halvorssen, *supra* note 8, at 52.

<sup>47</sup> See id.

<sup>48</sup> See id. at 54.

<sup>49</sup> See id. at 56.

money.<sup>50</sup> Consequently, the concept of preserving resources, especially the natural environment, for future generations is often not considered.

*Halvorssen* uses this fact to further reinforce her argument that international law needs to treat developing nations differently, so that they may be given enough leeway to develop sufficiently and therefore to be able to prioritize the environment differently.<sup>51</sup> Equitable treatment under international conventions, as outlined in later chapters of her book, may allow this priority shift, especially when included with the other financial and technological incentives *Halvorssen* discusses in later chapters.<sup>52</sup>

Chapter Four: Facilitating the Participation of Developing States - Sources of Conflict Regarding Treatment of Developing Countries in International Regulatory Process

Involvement of developing countries is essential to ensure the success of international agreements for the protection of globally sensitive natural resources. Facilitating the participation of developing [\*137] countries through the use of incentives, in effect giving them differential treatment, is one of the most contentious issues in this context.<sup>53</sup>

#### Benefits for Developed Countries of Using Incentives (Differential Treatment) for Developing Countries

Traditionally, treaties have made all obligations and restrictions equal, with no special treatment given based on economic or social circumstances.<sup>54</sup> This results in either stringent regulations upon all nations party to the convention, or in environmental protection at the lowest level.<sup>55</sup> Thus, either restrictions placed on developed nations are minimal, or the obligations of developing nations are too great, providing a disincentive for either to join multilateral agreements.<sup>56</sup>

*Halvorssen* outlines various arguments showing that the approach of equal treatment is not feasible.<sup>57</sup> She observes that it either places too great a responsibility upon the developing nations, unattainable due to economic and social concerns, or it results in minimal environmental responsibility for developed nations.<sup>58</sup> In such situations, *Halvorssen* argues, incentives for joining multilateral agreements and participating in environmental conferences are minimal.<sup>59</sup> According to *Halvorssen*, participation by all nations, developed and developing alike, is the key to preventing further environmental harm.<sup>60</sup> As any treaty or convention is binding only on those nations that are parties to it, it has little effect on those that do not join.<sup>61</sup> Developing nations that do not join with the parties to the treaty continue to develop, and increase their pollution levels, with little or no international regulation.<sup>62</sup>

*Halvorssen* instead endorses the theory of equity, whereby each nation becomes responsible at a level equivalent to

<sup>50</sup> See id. at 56-57.

<sup>51</sup> See id.

<sup>52</sup> See id.

<sup>53</sup> Id. at 67.

<sup>54</sup> See id. at 3.

<sup>55</sup> See id. at 4.

<sup>56</sup> See id. at 72.

<sup>57</sup> See id. at 69.

<sup>58</sup> See id.

<sup>59</sup> See id. at 72-73.

<sup>60</sup> See id. at 68.

<sup>61</sup> See Anthology, supra note 4, at 45.

<sup>62</sup> See Halvorssen, supra note 1, at 69.

its own harms and capabilities.<sup>63</sup> She argues that each individual nation's economic and social circumstances should be examined prior to assigning it a specific [\*138] level of responsibility or obligation. This way, developing nations can be assigned duties under the treaty that are readily attainable. Similarly, as they continue to develop, the treaty will gradually implement further levels of regulation to control the increasing pollution levels that inevitably result from industrialization.<sup>64</sup> This way, developing nations will not feel as if they are bearing the brunt of environmental clean-up costs for which they are only minimally responsible, while developed nations will be regulated at a more stringent level almost immediately.<sup>65</sup> Additionally, developed nations will not be forced to bear an unreasonable or disproportionate level of the obligations. As the share of pollution emitted by developing nations increases, so will the share of responsibility undertaken by them.

#### Different Types of International Norms

*Halvorssen* outlines three basic types of international norms: absolute, contextual, and differential.<sup>66</sup> Absolute norms require equal treatment regardless of circumstances.<sup>67</sup> Contextual norms are a bit more flexible. However, *Halvorssen*'s argument supports the use of differential norms: those that vary the obligation of each nation depending on its ability and circumstances.<sup>68</sup>

#### Differential Treatment or Uniform Environmental Norms?

*Halvorssen* argues that by using differential treatment, a greater number of developing nations will have incentive to join international treaties.<sup>69</sup> By allowing leeway for developing nations to develop before they are concerned with the same level of regulation as developed nations, differential norms make compliance with obligations easier for these nations to attain.<sup>70</sup>

[\*139]

#### Alternative Approaches to Promote Participation

There are several methods to include differential norms in international environmental law and treaties. Some advocated by *Halvorssen* include allowing NGOs to provide education, funding, or technology, and compensating developing nations for the lost opportunity to develop in a traditional way.<sup>71</sup>

*Halvorssen* offers several examples in recent history that provide evidence that the theory of differing responsibilities has taken hold. GATT gives developing nations leeway in order to assist economic *development*.<sup>72</sup> The Montreal Protocol offers delayed compliance with regulations for developing nations.<sup>73</sup> Principle 7 of the Rio Declaration states the concept of "common but differentiated responsibility" between nations of varying levels of *development*.<sup>74</sup> Since the 1972 Stockholm Conference, this type of language has become increasingly common in treaties and in conference discussions.<sup>75</sup>

<sup>63</sup> See *id.* at 71-72.

<sup>64</sup> See *id.* at 75.

<sup>65</sup> See *id.* at 72.

<sup>66</sup> See *id.* at 69.

<sup>67</sup> See *id.*

<sup>68</sup> See *id.*

<sup>69</sup> See *id.* at 71.

<sup>70</sup> See *id.* at 72-74.

<sup>71</sup> See *id.* at 76-79.

<sup>72</sup> See *id.* at 29, 73.

<sup>73</sup> See *id.* at 69, 71.

<sup>74</sup> See *id.* at 74.

<sup>75</sup> See *id.* at 75.

## Chapter Five: Promoting the Participation of Developing States - Incentives and Disincentives in Some International Environmental Agreements

The Kyoto Protocol introduced differential treatment among developed countries including countries with economies in transition. This is an innovation in global environmental agreements, as opposed to regional agreements, some of which do include provisions with differential treatment among developed countries. Perhaps the next step will be to introduce differential treatment among developing countries.<sup>76</sup>

In discussing methods that have been used to promote participation by developing nations in international environmental agreements, *Halvorsen* first recognizes that differential treatment has already been used with regard to various developed nations.<sup>77</sup> Not only does she [\*140] promote the idea of different international norms for developing nations as a whole, but she also advocates separation of the group into various tiers, perhaps based on GNP or current levels of pollution.<sup>78</sup>

### Assistance to Enable Developing Countries to Participate in Treaty Negotiations

One of the first methods suggested by *Halvorsen* to promote full participation is assistance in the treaty negotiation and preparation processes.<sup>79</sup> Whether the assistance comes in the form of negotiation training seminars (as in the Rio Conference<sup>80</sup>) or funding for the treaty negotiations themselves (as with the Framework Convention for Climate Change<sup>81</sup>), *Halvorsen* strongly suggests that this type of preparatory assistance will greatly increase both the ability of developing nations to understand the implications of the suggested treaties, as well as provide them with a greater ability to place their viewpoints on the table.<sup>82</sup> Each of these results would end in a greater incentive to participate in environmental protection treaties.<sup>83</sup>

### Treaty Provisions

There are several types of treaty provisions that *Halvorsen* argues will help promote full participation. First, she suggests provisions allowing for different core obligations depending on the status of the nation.<sup>84</sup> For instance, the Montreal Protocol<sup>85</sup> allows for delayed compliance in meeting the general treaty obligations required for each member nation.<sup>86</sup> *Halvorsen* also suggests that this delayed compliance schedule, which is linked to obligations of technical assistance from developed nations, makes the obligations for developing nations only as [\*141] stringent as the provided assistance is helpful.<sup>87</sup> The FCCC also provided for delayed compliance with its obligations for developing nations.<sup>88</sup>

<sup>76</sup> Id. at 85-86.

<sup>77</sup> See id.

<sup>78</sup> See id.

<sup>79</sup> See id. at 86-87.

<sup>80</sup> See id.

<sup>81</sup> See Framework Convention on Climate Change, May 29, 1992, 31 I.L.M. 849 (1992) (entered into force Mar. 21, 1994) [hereinafter FCCC].

<sup>82</sup> See Halvorsen, supra note 1, at 86-87.

<sup>83</sup> See id.

<sup>84</sup> See id. at 87.

<sup>85</sup> See Montreal Protocol on Substances That Deplete the Ozone Layer, Sept. 16, 1987, 26 I.L.M. 1550 (entered into force Jan. 1, 1989).

<sup>86</sup> See id. at 87-88.

<sup>87</sup> See id. at 89.

<sup>88</sup> See id. at 92.

Next, *Halvorssen* discusses the use of financial assistance to developing nations designed to facilitate the implementation of their treaty obligations.<sup>89</sup> The first example of financial assistance in an environmental treaty was the Montreal Protocol, with its Multilateral Fund.<sup>90</sup> Later financial assistance provisions, many of which are modeled after the Multilateral Fund, generally set up requirements for developed nations to fund technical *development* and to provide more environmentally friendly technology to developing nations that are party to the treaty.<sup>91</sup> Such requirements are currently included in the FCCC, the Biodiversity Convention, and the Convention to Combat Desertification.<sup>92</sup>

*Halvorssen* also discusses joint implementation as a method of promoting full participation. Joint implementation is an exchange of technology and assistance for emission reduction credits for developed nations.<sup>93</sup> This incentive for participation, anticipated as being market-driven, was first developed in the Convention on Climate Change.<sup>94</sup> Because of the market-based nature of this incentive, many have suggested that it allows private entities, like NGOs, to get involved. It provides them with the ability to purchase - for use or retirement - emissions credits resulting from reductions in developing nations.<sup>95</sup>

Finally, treaties such as the Law of the Sea Convention (UNCLOS)<sup>96</sup> include provisions for technical assistance, sometimes in the form of educating developing nations on legislative drafting skills and technological innovations.<sup>97</sup> The Montreal Protocol actually requires nations to assist developing nations in this manner.<sup>98</sup>

[\*142] In addition, Equality Among Unequals discusses various disincentives that have been used in recent environmental treaties. For instance, the Convention on International Trade in Endangered Species (CITES)<sup>99</sup> implements trade sanctions against those nations not party to the treaty.<sup>100</sup> Similarly, the Montreal Protocol includes procedures to deal with Parties that fail to comply with its provisions, including the loss of funding that many developing nations require to progress.<sup>101</sup>

#### Assessment of the Different Types of Incentives - Differential Norms

Overall, *Halvorssen* supports the inclusion of incentives within environmental treaties.<sup>102</sup> She especially supports the increased flexibility individual nations are given based on their circumstances.<sup>103</sup> This leeway allows for a greater possibility of compliance and success.<sup>104</sup> However, disadvantages do exist. It is possible, *Halvorssen* suggests, that too much leeway will undermine the *goals* of the treaty itself.<sup>105</sup> For example, monitoring problems or a lack

<sup>89</sup> See id. at 92.

<sup>90</sup> See id.

<sup>91</sup> See id. at 92-93.

<sup>92</sup> See id. at 93-95.

<sup>93</sup> See id. at 96-97. Emission reduction credits would be based on a nation's actual emissions, subtracted from an annually-set standard.

<sup>94</sup> See id. at 97. See also FCCC, supra note 81.

<sup>95</sup> See Halvorssen, supra note 1, at 98.

<sup>96</sup> See United Nations Convention on the Law of the Sea, done Dec. 10, 1982, U.N. Doc. A/CONF.62/122, reprinted in 21 I.L.M. 1261 (entered into force Nov. 16, 1994) [hereinafter UNCLOS].

<sup>97</sup> See id. at 99.

<sup>98</sup> See id.

<sup>99</sup> See Convention on International Trade in Endangered Species of Wild Fauna and Flora, Mar. 3, 1973, 993 U.N.T.S. 243.

<sup>100</sup> See Halvorssen, supra note 1, at 103.

<sup>101</sup> See id.

<sup>102</sup> See id. at 105.

<sup>103</sup> See id. at 106.

<sup>104</sup> See id.

<sup>105</sup> See id.

of fulfillment of obligations may keep the treaty from fulfilling its purpose.<sup>106</sup> Although it may be too early to judge, it is apparent that delayed compliance and other incentive schemes have helped several nations exceed expectations, while at the same time contributing to a black market in controlled substances.<sup>107</sup> Despite the potential drawbacks, *Halvorsen* concludes that the proper direction is toward an incentive-based system rather than uniform obligations.<sup>108</sup>

#### Chapter Six: International Institutional Structures

To promote the participation of developing countries in international [\*143] environmental agreements, international institutions are playing an ever-increasing role and new entities are being established... They can function both as implementing agencies for treaties containing incentives for developing countries or alternately by promoting participation of developing countries in the treaties by working outside or independently of the treaties.<sup>109</sup>

Part of *Halvorsen*'s argument highlights the involvement of international institutions like the World Bank and other United Nations agencies.<sup>110</sup> These agencies, while formerly focused either on *development* or on the environment, are now being revamped to consider both.<sup>111</sup> This revamping process is a result of the increased recognition that both *development* and environmental protection are inevitably linked, and must be considered jointly.<sup>112</sup> It is *Halvorsen*'s argument that the restructuring of these institutions must focus on enabling developing nations to more fully participate in the multilateral treaties where they are currently underrepresented.<sup>113</sup> *Halvorsen* divides international aid institutions into two categories: 1) those dealing with environmental policy and 2) those dealing with *development*.

#### Institutional Structures for Monitoring Implementation of International Environmental Instruments

Institutions dealing with environmental policy are increasingly considering the effect of *development* on the environmental problems they were created to address. For instance, the United Nations Environment Programme (UNEP) adopted sustainable production, consumption, and management of natural resources as its areas of focus for the 1996-97 work program.<sup>114</sup> However, many of these institutions lack the enforcement authority or administrative cohesion to actually prevent environmental degradation.<sup>115</sup> Instead they resort to monitoring the cause and effect of national policies on the international environment.<sup>116</sup>

#### [\*144]

#### Institutional Structures Providing *Development* Assistance - Integrating Environmental Considerations into *Development* Projects

It appears easier for *development* institutions to focus on the environment than it is for environmental institutions.<sup>117</sup> For example, since 1987, the World Bank has increasingly become an environmental agency, both in policy and

<sup>106</sup> See id.

<sup>107</sup> See id. at 106-107.

<sup>108</sup> See id. at 108.

<sup>109</sup> Id. at 117.

<sup>110</sup> See id.

<sup>111</sup> See id.

<sup>112</sup> See id.

<sup>113</sup> See id. at 118.

<sup>114</sup> See id. at 120.

<sup>115</sup> See id. at 122-123, 125-127.

<sup>116</sup> See id.

<sup>117</sup> See id. at 129.

in practice.<sup>118</sup> It now requires an environmental screening process for each proposed process, the passing of which is required prior to a fund transfer.<sup>119</sup> However, *Halvorsen* does note that the Bank has had a few problems in the short time since it has implemented environmental policy.<sup>120</sup> Lack of enforcement of legal covenants due to an overwhelming volume of loans, as well as a poor system of accountability, have hampered the Bank's efforts.<sup>121</sup> Nevertheless, a "green tinge" has developed around the policies of the modern World Bank, and while it is still too early to tell, other programs, like the United Nations *Development* Programme (UNDP) Capacity 21, could help increase progress on the sustainable *development* and environmental fronts in developing nations.<sup>122</sup>

#### Chapter Seven: Special Funding Mechanisms

In general, financing for the implementation of the international environmental agreements comes from the treaty parties' own resources. Yet because most developing countries are burdened with huge debts, they usually depend on external funding to help pay for environmental protection measures.<sup>123</sup>

One of the largest problems facing developing nations as a barrier to participation in the international environmental movement is a lack of funding. It is for that reason that *Halvorsen* discusses special funding mechanisms designed to increase the capital that developing nations will need, not only to increase compliance, but to participate in the negotiations.<sup>124</sup> Some of these funding mechanisms currently exist; [\*145] however, the majority have been in existence for so short a time that their effect has yet to be determined.<sup>125</sup>

#### Global Environmental Facility (GEF)

The GEF, established by the World Bank, promotes and funds projects that focus on solving global environmental problems.<sup>126</sup> It is unclear whether the World Bank approaches this funding as a separate mechanism or just adds it on to other *development* programs.<sup>127</sup> Because it is a trust, the accountability for the use of the funds is more direct and responsible than other types of funds.<sup>128</sup>

#### "Debt-for-Nature" and Other Swaps

Debt-for-nature swaps are the most commonly used resource for funding, as they involve not only other governments, but also private parties.<sup>129</sup> They allow developing nations to relieve internationally-owed debt and allow other entities to help conserve natural resources.<sup>130</sup> *Halvorsen* is quick to note several problems with this swap mechanism, including intrusions on sovereign authority and lack of enforceability.<sup>131</sup> As an alternative, she offers the concept of a technology-for-debt swap, as has occurred in the recent past, so that nations may continue their current

<sup>118</sup> See id. at 129-130.

<sup>119</sup> See id. at 130-131.

<sup>120</sup> See id. at 135.

<sup>121</sup> See id. at 136-138.

<sup>122</sup> See id. at 138-139.

<sup>123</sup> Id. at 149.

<sup>124</sup> See id. at 149.

<sup>125</sup> See id. at 149-150.

<sup>126</sup> See id. at 150.

<sup>127</sup> See id. at 152.

<sup>128</sup> See id.

<sup>129</sup> See id.

<sup>130</sup> See id. at 153.

<sup>131</sup> See id.

course of *development*, but do so in a more environmentally sound manner.<sup>132</sup>

#### Tradable Permits

Emission Reduction Permits, as seen in the Kyoto Protocol,<sup>133</sup> have yet to be included as international obligations for developing nations.<sup>134</sup> However, *Halvorsen* argues that their implementation is rapidly approaching, and there are several key factors that need to be [\*146] considered.<sup>135</sup> For instance, developing nations need to be assured of equal bargaining power, and the exchange of permits needs to be limited so that new technology, rather than permit hoarding, becomes the standard practice.<sup>136</sup>

#### International Carbon Tax

Although currently not in use, international taxes on specific pollutants might also be an effective way of sharing the burden of environmental degradation equally.<sup>137</sup> Additionally, the tax, paid almost exclusively by currently developed nations, could then be used to help support sustainable *development* programs in developing nations.<sup>138</sup> Again, *Halvorsen* points out, issues of sovereignty and effective reduction would have to be addressed.<sup>139</sup>

#### Chapter Eight: The Role of NGOs and Other Major Groups in Promoting Universal Participation

At present, private capital flows are the most important source of external funding for developing countries. This being the case, it would seem to be vital to get business and industry involved in pursuing the *goal* of sustainable *development*.<sup>140</sup>

As implementing agencies of environmental protection and sustainable *development* norms, *Halvorsen* proposes that NGOs have two distinct roles. First, they can assist developing nations participate in incentive programs as provided in treaties. Second, they can operate independently of treaties, using mechanisms such as debt-for-nature swaps.<sup>141</sup>

[\*147]

#### Definition and Legal Status of NGOs

As non-state actors, NGOs do not have international legal actor status.<sup>142</sup> However, they are gradually gaining a greater amount of influence in international circles.<sup>143</sup> Although obviously constrained by this status, it has its own distinct advantages, according to *Halvorsen*.<sup>144</sup> For instance, NGOs are not constrained by rules of international

<sup>132</sup> See *id.* at 154-155.

<sup>133</sup> See Kyoto Protocol to the United Nations Framework Convention on Climate Change, U.N. Doc. FCCC/CP/1997/7/Add.1 (1997).

<sup>134</sup> See *Halvorsen*, *supra* note 1, at 157.

<sup>135</sup> See *id.* at 158.

<sup>136</sup> See *id.*

<sup>137</sup> See *id.* at 160.

<sup>138</sup> See *id.*

<sup>139</sup> See *id.*

<sup>140</sup> See *id.* at 177.

<sup>141</sup> See *id.* at 167.

<sup>142</sup> See *id.* at 169.

<sup>143</sup> See *id.*

<sup>144</sup> See *id.*

law, and are not subject to repercussions for openly voicing criticism.<sup>145</sup> Additionally, NGOs tend to represent a wide range of ideologies, granting voice to the broad spectrum of beliefs regarding the environment and development.<sup>146</sup>

#### The Role of NGOs in Relation to Developing Countries' Participation in Multilateral Environmental Treaties

Halvorsen discusses the role of NGOs as extremely influential.<sup>147</sup> NGOs participate in negotiations and initiate proposals included on international convention agendas.<sup>148</sup> For instance, when it was determined that many aspects of the Montreal Protocol were inadequate to control ozone depletion, NGOs initiated and monitored problem nations until their policies had strengthened beyond the requirements of the Protocol.<sup>149</sup> This led to a greater degree of protection at the Second Meeting of the Parties.<sup>150</sup>

#### "Other Major Groups" - Business and Industry

Halvorsen also recognizes other groups - those funded by business and industry - and their role in international environmental law. Unlike the NGOs discussed above, these groups represent the development side of the equation.<sup>151</sup> Halvorsen argues that these groups must be pushed in the direction of sustainable development and away from exploitation [\*148] of natural resources commonly found in developing nations.<sup>152</sup> One distinct advantage that this group has - and why it has such a great amount of influence with developing nations - is its control over new business techniques and technology.<sup>153</sup> Already, some environmental NGOs have been able to convince business and industry representatives to take a greener approach, allowing developing nations to have access to environmentally clean technology.<sup>154</sup> However, Halvorsen reinforces the idea that development agreements between developing nations and business and industry representatives must be carefully monitored to ensure that environmental protection is at least part of the focus.<sup>155</sup>

#### Chapter Nine: Conclusion

Increasingly, international environmental agreements are specifically providing for differential treatment, such as delayed compliance schedules, and technical and financial assistance for developing countries. This trend must continue and become part of the framework of international environmental law.<sup>156</sup>

Halvorsen concludes by stating that the overall trend toward equitable, rather than equal, treatment must continue, and continue to be modified even further, so that individual nations have as much incentive as possible to participate in environmental protection.<sup>157</sup> Her examples show how she thinks the trend can be modified. However, the current format, and that advocated in her text, she warns, is focused solely on sustainable development.<sup>158</sup> More must be done to attain environmental improvement, and to do so requires a much greater degree of multinational participa-

<sup>145</sup> See id. at 169-170.

<sup>146</sup> See id. at 171.

<sup>147</sup> See id.

<sup>148</sup> See id.

<sup>149</sup> See id. at 172.

<sup>150</sup> See id.

<sup>151</sup> See id. at 173.

<sup>152</sup> See id. at 173-174.

<sup>153</sup> See id. at 174.

<sup>154</sup> See id. at 174-176.

<sup>155</sup> See id. at 177.

<sup>156</sup> Id. at 181.

<sup>157</sup> See id.

<sup>158</sup> See id. at 182.

tion, without regard to level of *development*.<sup>159</sup>

#### Reviewer's Notes

Equality Among Unequals provides an extended study of the direction that the field of international environmental law is taking. The concepts of equitable norms and sustainable *development* are growing in [\*149] their popularity and importance in the field. As *Halvorsen* states numerous times, it is most important to have global cooperation in order to attain global improvement. This may even be true if, as *Halvorsen*'s thesis indicates, global cooperation means similar but different global obligations and responsibilities.

*Halvorsen*'s text does not provide an in-depth analysis of any one topic, but it does provide a starting point in further research. Areas that could be expanded in the study, but were perhaps too involved for the scope of the project, include, for example, an economic analysis of short-run versus long-run effects of the various types of incentives and obligations proposed. This would allow the reader a chance to judge, at least from one perspective, the real value of technology-based and monetary-based assistance and their effect on sustainable *development* and environmental protection. Similarly, many areas introduced in the text could be expanded beyond the scope of the book to include more improvements and proposals to increase the equity between developing and developed nations.

*Halvorsen*'s book provides a thoroughly comprehensive list of sources necessary for further study in the area. She includes a survey of authors on either side of the incentive-based encouragement argument, and discusses their arguments fairly even when disagreeing with those having a more formalistic viewpoint. Similarly, her discussion of the various international institutions and NGOs is helpful in giving the reader a basic framework regarding the possibility of their further involvement in helping developing nations protect the environment. Overall, Equality Among Unequals provides a well-studied, inclusive overview of the subject of equity versus equality in international environmental agreements.

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<sup>159</sup> See *id.* at 182-185.