1. Introduction

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The current economic and ecological climate calls for a reappraisal of the international legal and political framework governing natural resources, defined broadly to include materials and organisms naturally occurring in the environment, such as water, mineral and fossil fuels, and cultivated resources, such as food crops, both renewable and exhaustible. This reappraisal is urgent because the governance and management of natural resources have formed a pivotal backdrop to the evolution of international economic law in the post-war period and have been critical components of the process of economic globalization.

In the 1960s and '70s, the governance of natural resources was of great concern to development practitioners and government policy-makers from the South, given the heavy dependence of many newly independent states on primary commodities as their main revenue base. Concerns of developing country governments in particular were reflected in several United Nations (UN) resolutions, including the 1962 UN General Assembly's Declaration on Permanent Sovereignty on Natural Resources and the ill-fated General Assembly Resolutions on the New International Economic Order (NIEO). It was also reflected in the way international agencies, such as the United Nations Conference on Trade and Development (UNCTAD) and the now defunct UN Centre on Transnational Corporations, sought to support developing countries in their negotiations with transnational companies and in their international trade arrangements.

At the heart of this debate was the tension between the determination of developing countries to control the production and marketing of natural resources and developed countries' objective to ensure their companies would maintain full access to these resources. In some cases this tension led to political crises that culminated in the nationalization of foreign-owned companies. Underlying developing countries' assertion of sovereignty over their natural resources was their desire to ensure that the revenue obtained from the exploitation of natural resources was used to further their economic development policies.

By the 1980s and early 1990s, the process of economic globalization, facilitated by successive policies of deregulation, privatization and liberalization, led to significant shifts in the governance of natural resources at the national and international levels. Market-led solutions replaced state intervention in the natural resources sector, while sweeping legal and regulatory changes were implemented in developing countries to facilitate the extraction and exploitation of natural resources. At the same time, developing countries, prompted by the International Monetary Fund and the World Bank, were encouraged to diversify their export revenue in order to reduce excessive dependence on natural resources. The new economic priorities shifted international concerns away from regulation of the production and consumption of natural resources, thus neglecting the ecological consequences linked to their exploitation.

The revival and refinement of the concept of sustainable development in the 1990s – alongside the watershed environmental agreements, the Convention on Biological Diversity and UN Framework Convention on Climate Change (UNFCCC), concluded at the UN Conference on Environment and Development (UNCED), (the Rio Summit) in 1992 – refocused international attention on natural resources. This refined approach attempted to reconcile tension between the urgent need of developing countries to promote investment in natural resources with the imperative to conserve the ecological base. The principle of sustainable development and the attendant evolution of the principle of equity in the distribution of natural resources also address broader governance concerns, particularly where government and international development policies intersect with the interests of various stakeholders in the locality and resource chain.

Nonetheless, despite greater awareness of the need to secure sustainability in the production and use of natural resources, the 1990s also witnessed the surge of international legal instruments, including the birth of the World Trade Organization (WTO) and the proliferation of bilateral and regional trade and investment agreements, which have served, in many ways, to accelerate and entrench policies of deregulation, privatization and liberalization that have led to earlier concerns over externalities generated by natural resources exploitation and use. This includes concerns over impact of these international economic rules on states' capacity to design and implement coherent and sustainable policies in natural resources sectors, including policies that take into account human rights, rights of indigenous peoples, labour standards and environmental sustainability.

Contributors in this collection explore the different dimensions of natural resource governance in the contemporary economic, political and

legal landscape. They reflect upon and address the different aspects of the conflicts and contradictions arising at the intersection between international economic law, sustainable development and other areas of international law, notably human rights law and environmental law. Many contributors address the theoretical and practical challenges of what has often been described as the fragmentation of the international legal field. Here, the overlapping and often conflicting imperatives of different legal regimes highlight the shortcomings of international and national laws in the task of managing ecological externalities and community tensions. At the same time, questions arise as to the space for regulatory and policy autonomy in formulating sustainable policies in the natural resources sector in the face of international legal constraints.

Lorenzo Cotula begins the collection (Chapter 2) by considering the impact of the rapid evolution of international investment law on the regulation and governance of natural resources in developing countries. He considers the significance of the extended network of international investment agreements and the accompanying rise of investor-state arbitration to the changing interface between international economic regulation and domestic control over natural resources. Examining the developments in investment treaty law-making and the jurisprudence of arbitral tribunals in natural resource disputes, Cotula argues that normative provisions of investment treaties and arbitral decisions have far-reaching implications for countries' regulatory space, necessitating careful thinking about states and communities' engagement with foreign investment in natural resources sectors.

The question of international constraints on domestic regulatory space in natural resources investments is also taken up by **Celine Tan** in Chapter 3. She considers the implications of political risk insurance (PRI) in the regulation and governance of natural resources sectors in developing countries. Viewing PRI as a form of government rationality that provides a framework for organizing and regulating the behaviour of actors involved in natural resource investments, she explores how utilization of this niche financial product offered by public and private providers can lead to a complex web of governance arrangements that can reframe the terms of engagement between stakeholders and redefine the host state's engagement with the broader international community. This is particularly acute in natural resources projects where the existence of a PRI arrangement can significantly alter the dynamics of international and domestic legal, economic and political relationships between different actors.

In Chapter 4, **Emma Wilson and James Van Alstine** also examine the tensions created between investors and local communities in natural

resources projects. They consider the so-called ‘resource curse’, according to which the financial windfalls generated by the export of natural resources is often compromised by poor governance, weak institutions and corruption. Drawing on case studies of sub-Saharan African countries, the authors explore how a global ‘soft law’ initiative, the Extractive Industries Transparency Initiative (EITI), has supported domestic and international efforts to institutionalize more effective resource governance practices and harness the development potential of investments in natural resources sectors.

Governance and regulation of natural resources in the context of states’ competing legal obligations is examined by **Juan Pablo Bohoslavsky**, **Juan Justo** and **Liber Martin**; **Daria Davitti** and **Julio Faundez** in Chapters 5, 6 and 7. These chapters highlight the competing pressures many developing countries face in relation to regulation and policymaking on sustainable development where such decisions intersect with international agreements to protect foreign investment. Where Chapters 5 and 6 consider the tensions that arise between states’ obligations to foreign investors under international investment law and their duties to protect and respect the human right to water and sanitation, Chapter 7 explores how these tensions arise in the context of specific developing countries in Latin America.

Juan Pablo Bohoslavsky, **Juan Justo** and **Liber Martin** (Chapter 5) explore the implications of bilateral investment treaties (BITs) on states’ duties to protect the human right to water and sanitation from violations by private companies. The authors examine the interaction between the two competing international regimes that intersect in the provision of water and sanitation services – international investment law and international human rights law – and explore ways in which public authorities, particularly in developing countries, can reconcile state commitments under BITs and other international investment agreements (IIAs) with their human rights duties in this sector.

Daria Davitti, in Chapter 6, explores similar tensions between foreign investment and human rights within the context of conflict zones, focusing on the manner in which this relationship plays out in the context of Afghanistan’s extractives sector. While acknowledging that conflict zones are challenging contexts for the practical implementation of sound investment and human rights policies, she argues that it is possible to reconcile the implementation of human rights with foreign investment in the area of natural resources.

For **Julio Faundez** in Chapter 7, the contradictory nature of international law that assigns primacy to the protection of foreign investor rights over human rights, indigenous rights and environmental protection

through differing levels of legal efficacy, has created contradictions in the governance and regulation of natural resources sectors in Latin America. Examining the influence of international legal rules on the natural resource policies of Brazil, Chile and Ecuador, Faundez argues that the discrepancy between the effectiveness of international trade and investment law vis-à-vis international human rights and environmental law enables foreign investors and host governments to intensify extractive activities without regard to the human and environmental costs. His chapter demonstrates that while domestic factors have contributed to the neglect of human rights and environmental protection concerns, international trade and investment law remains the most significant constraint to governments adopting alternatives to ‘extractivist’ approaches to the development of natural resources sectors.

Faundez’s chapter is complemented by **Christiana Ochoa**, in Chapter 8, exploring how the contradictions between the benefits and negative externalities of foreign direct investment (FDI) and the conflict between investor interests and local community concerns are played out on the site of a mining project in Latin America. Ochoa’s chapter, based on ethnographic research on a gold-mining area in the Colombian highlands, provides a fascinating grounded account of how FDI – commonly promised as a stabilizing force leading to positive developmental outcomes – can generate significant conflict and instability within host populations as local communities struggle with the political, economic and environmental changes brought about by the arrival of foreign investors. Here, she documents how the arrival of a foreign investor in a traditional gold-mining area can lead to the economic, social and physical displacement of the local populace and what role, if any, the law plays in facilitating or mitigating these displacements.

The role of law in carving out spaces for natural resources extraction and conservation is explored by **Manuela Picq** in Chapter 9. Her chapter challenges conventional narratives about the Amazon, a vast reserve of ecology and indigenous communities that is often portrayed as a uniform Utopia of nature serving as the earth’s frontier against global warming and biodiversity loss rather than as a site for natural resource extraction and exploitation that has contributed towards the climate crisis. Picq argues that the objectification and romanticization of the Amazon in international legal and political discourse ignores the complex history of the Amazon and its societies and that this marginalization impoverishes global thinking on a ‘resourceful space’ that is integral to responses to the current multiple planetary crises.

Following on from Picq, **Sam Adelman** (Chapter 10) critiques the ways in which tropical forests, including those located in the Amazon,

have become objects of climate and environmental governance while at the same time being commodified and marketized under the international framework for climate change adaptation and mitigation. Focusing on the expanded United Nations' Reducing Emissions from Deforestation and Forest Degradation (UN REDD+) framework, Adelman uses the concept of 'green governmentality' to consider the limitations of current structures of international economic and environmental law in protecting forests and ecological sustainability. He considers how technology has enabled forests to be subject to surveillance, monitoring and measurements and their inhabitants subjected to market discipline under the REDD+ regime and questions whether this combination approach is sufficient for reducing deforestation, biodiversity loss and protecting the livelihoods of forest dwellers.

John McEldowney continues the theme of environmental protection in Chapter 11 by examining how the world's second-largest economy, China, is tackling the ecological effects of its rapid economic growth in the past two decades. Arguing that the country's achievements over the past decade have been accomplished at a high environmental cost through pollution and pressures on natural resources, McEldowney examines how China is attempting to redress these problems through the introduction of a new Environmental Protection Law that seeks to establish a tougher regime for environmental protection and greater measures to foster sustainable development.

Turning from the domestic to the international, **Fiona Smith** (Chapter 12) examines how international trade law treats domestic measures to protect the environment and manage natural resources. Adopting a global value chain approach to international trade, she examines the impact of WTO rules on states' capacity to control the depletion of natural resources. In examining WTO practice and jurisprudence, including the *China Rare-Earths* case which considers the legality of China's imposition of export duties on environmental grounds, Smith argues that the application of WTO rules shows the fine balance between over-exploitation and restrictions on the flow of natural resources.

Sharron McEldowney (Chapter 13) also discusses the role of international law in mitigating the health and environmental externalities of globalization and economic development, particularly in relation to the global production and trade in chemicals that have been integral to the industrialization process in the modern era. Her chapter discusses the challenges posed to effective international regulation of the manufacture, sale, transport, use and disposal of organic and inorganic chemicals that have an impact on humans and the ecosystems. McEldowney argues that

while international Conventions and regulatory arrangements have provided a general framework for chemicals governance, the effective regulation of the global chemicals sector remains undermined by the economic asymmetries between countries that lead to a lack of technical capacity and weak regulatory and governance infrastructures in developing countries and opportunities for chemical conglomerates to exploit these regulatory disparities and export regulatory risks.

The ongoing challenge of regulating transnational corporate activities that have an impact on natural resources and sustainable development is examined by **David Ong** in Chapter 14. In this chapter, Ong considers the difficulties in holding to account transnational corporations in cases where neither host states nor international rules provide effective remedies for environmental harms. Drawing on examples from the oil industry, Ong considers whether applying the investors' home state legal standards might offer a practical alternative, to ensure that private actors are accountable for breaches of social and environmental standards.

In the final chapter of the collection, **Claire Buggenhoudt** (Chapter 15) reverts to international frameworks to consider how the rise in international investment arbitration is impacting on states' ability to regulate the activities of foreign investors on environmental sustainability. As Cotula argues in Chapter 2, the decisions of investor-state arbitral tribunals have far-reaching implications since they reduce domestic policy space. Buggenhoudt explores this aspect further through an examination of the investment arbitration system and a detailed analysis of how such tribunals have treated issues of public interest, notably those relating to environmental protection measures, in cases brought by foreign investors against host states. She argues that while there is an emerging consensus on the issue, because of the fluid nature of investor-state dispute settlement there remains considerable uncertainty regarding the degree of flexibility that host states have in adopting public interest measures, including those that concern sustainable development.