20th Anniversary Editorial

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Twenty years ago, when the forerunner of this journal (then called the *Land Management and Environmental Law Review*) first appeared, I was its Managing Editor. Recently, I had occasion to look back at the first half-dozen issues of the journal. At about the same time, I also happened to review the most recent version of the legal work programme of the United Nations Environment Programme (UNEP). I found both exercises quirkily unsettling, as my first reaction was not how many things have changed, but how many things remain the same.

There have, of course, been significant developments in environmental law over the past two decades and most of those developments have been positive. Twenty years ago, this country's law relating to the disposal of waste was in an antediluvian state and the concept of liability for contamination of land was more accurately to be described as embryonic than as in its infancy. Both are now highly sophisticated areas of law (perhaps too sophisticated in the case of the definition of waste!). An early article in the journal commented with some scepticism on the prospects for the adoption of environmental audit techniques in industry, yet ISO 14000 and its derivatives have become part of the sound management toolkit. At the international level, the damage to the ozone layer was beginning to be recognised as a genuine 'common concern of humanity', to misuse a later phrase, and there was much head-scratching about how an effective response could be achieved. The protection of the ozone layer was the headline issue in early versions of UNEP's Montevideo Programme for Environmental Law Development. Today, the issue belongs to environmental legal history, as a result of a stupendously successful treaty.

On the other hand, many of the topics treated in the early issues remain depressingly familiar. The comparative efficacy (or lack of it) of penal and administrative sanctions in controlling or preventing environmental misdeeds, a major preoccupation twenty years ago, remains so today as we wait with far from total confidence to gauge the effects of the soon-to-be-enacted Regulatory Enforcement and Sanctions Act. Neighbourhood noise has received more than its share of legislative attention since 1988, yet few readers will be satisfied that the problems caused by anti-social noise have been resolved or even much diminished. At the international level, the unrelenting litany of calls for further capacity-building and effective implementation has continued uninterrupted throughout the two decades.

Early issues of LMELR contained discontented grumblings about the sectoral nature of environmental regulation and the consequent lack of 'joined-up thinking' (if that discredited phrase still retains any meaning). At the international level, the consciously 'catalytic' role adopted by UNEP and the genuine jurisdictional difficulties caused by the purpose-driven competences of international organisations make this understandable, if regrettable, but at the national level there is no excuse. If anything, the problem appears to have intensified over the two decades and constant reinventions of the environmental regulatory structure seem to have done little to ameliorate the mess.

There is today much more environmental law than there was in 1988, a significant proportion of it stemming from international law sources. The pervasive nature of some of the subjects which that law now has to address, such as the possibility of climate change and the undoubted but largely ignored erosion of genetic diversity, makes it imperative that treaty responses must attract global support. To achieve that support, there is necessarily a dilution in the precision which can be achieved in the texts. Compare the text of an IMO convention of operational oil pollution control with, say, the Convention of Biological Diversity and the difference is striking. This is unfortunate as there is a good case to be made that it is in relation to regulation of the carbon economy that there is as great or greater need for clarity in the obligations. It is also disappointing that some international bodies, especially the European Union, appear to fail to appreciate that some environmental regulation, if it is to succeed, must be genuinely global and that there is no place for stricter regional measures in relation to these.

In addition, much thinking remains to be done on the environment and development conundrum. Is there really a justiciable right to development? What is its relationship to environmental norms? Is there a limit to the tolerance of OECD states in bankrolling environmental effort in, for example, climate change without some *quid pro quo* from the rest of the international community?

There seems to be plenty of potential for an editorial very similar to this one in the fortieth anniversary issue!