

Revue québécoise de droit international
Quebec Journal of International Law
Revista quebequense de derecho internacional



**ASIAN CULTURAL INFLUENCES ON ENVIRONMENTAL LEGAL
NORMS: RODA MUSHKAT, *INTERNATIONAL ENVIRONMENTAL
LAW AND ASIAN VALUES*, TORONTO, UBC PRESS, 2004**

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Volume 17, numéro 1, 2004

URI : <https://id.erudit.org/iderudit/1069310ar>

DOI : <https://doi.org/10.7202/1069310ar>

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Éditeur(s)

Société québécoise de droit international

ISSN

0828-9999 (imprimé)

2561-6994 (numérique)

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Citer ce compte rendu

Peters, H. A. (2004). Compte rendu de [ASIAN CULTURAL INFLUENCES ON ENVIRONMENTAL LEGAL NORMS: RODA MUSHKAT, *INTERNATIONAL ENVIRONMENTAL LAW AND ASIAN VALUES*, TORONTO, UBC PRESS, 2004]. *Revue québécoise de droit international / Quebec Journal of International Law / Revista quebequense de derecho internacional*, 17(1), 283–286. <https://doi.org/10.7202/1069310ar>

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**ASIAN CULTURAL INFLUENCES ON ENVIRONMENTAL LEGAL
NORMS: RODA MUSHKAT, *INTERNATIONAL ENVIRONMENTAL LAW
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*By Halton A. Peters**

Roda Mushkat's¹ *International Environmental Law and Asian Values*² is a timely exploration of the interface between Asian cultural values and international environmental law. The importance of understanding influences on the adoption and implementation of international environmental agreements pertaining to the Asian continent cannot be gainsaid. Asia is expected to increase its proportion of the world's human population from 60% in 2003, to 78% in 2030³. Perhaps more strikingly, the rate of urbanization in Asia over this period is expected to exceed that of all other regions worldwide⁴. The potential environmental consequences of Asia's changing demography have been explored elsewhere, as have the international agreements adopted and proposed to mitigate these consequences. With respect to the development of international environmental law in Asia, there has been a particular need to address the intersection between legal standards and cultural values because, as Mushkat recognizes, the concept of Asian values has long been exploited and misused in attempts to conceal or justify human rights abuses motivated by political and economic interests.

Identifying a coherent international legal context in which cultural norms might plausibly operate is a daunting task in its own right because the principles of international environmental law are reflected in thousands of acts and agreements adopted at local, national, regional, and global scales. In tackling this challenge, Mushkat has provided key insights into the influence of cultural attitudes on the widespread recognition of international environmental rights in Asia, and some explanation of the inconsistent jurisprudential vindication of these rights throughout the region.

Mushkat begins with an extension of her previous analysis of the ongoing contest between universalism and cultural relativism, a debate in which particularized regional values systems are conceived as "major obstacle[s] to any universalist

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¹ Roda Mushkat, Professor and Head of the Department of Law at the University of Hong Kong, has authored more than 60 legal articles as well as the book *One Country, Two International Legal Personalities: The Case of Hong Kong* (Hong Kong: Hong Kong University Press, 1997).

² Roda Mushkat, *International Environmental Law and Asian Values* (Toronto: University of British Columbia Press, 2004) [Mushkat]. A paperback version of the book will be available in July 2005.

³ UN Department of Economic and Social Affairs, *World Urbanization Prospects: The 2003 Revision*, UN Doc. ST/ESA/SER.A/237, UN Sales No. E.04.XIII.6 (2004), online: UN <<http://www.un.org/esa/population/unpop.htm>>.

⁴ *Ibid.*

notions of international legal order.”⁵ In her new work, Mushkat uses a discussion of the limitations of cultural analysis to advance the central question of her work: whether uniquely-held Asian cultural norms are impediments to Asia’s adoption and implementation of international environmental agreements. Mushkat’s answer, while unequivocally in the negative, provides a useful basis for understanding the diversity of Asian approaches to international environmental law.

Mushkat’s rejection of Asian value “essentialism” is immediately evident from the early discussion of factors that “render culture an unreliable indicator in the context of international law.”⁶ Noting that “the concept of Asian values distorts and [...] obscures the diversity of voices, ideas, and political philosophies within Asia”⁷, Mushkat’s treatment effectively repudiates the notion that commonly-held Asian cultural values, if they exist, can be expected to produce similar jurisprudential policies when operating in distinct economic and political contexts. When Mushkat asks “who interprets and speaks for Asian values?”⁸; the question is not only an invitation to scepticism as to those values that are often posited to be commonly held (e.g. “resolving major issues through consensus instead of contention” and “placing the interests of community above the vested interests of individuals”⁹), but an introduction to the difficulties associated with inferring underlying societal values from the endorsement of international accords by government officials¹⁰.

Among the most important contributions of Mushkat’s work is her consideration of the implications for Asia of the complex interaction between international environmental and human rights law. It is well recognized that the extension of international environmental standards has been limited by the conception of purely environmental damage as the unbreachable concern of sovereign states, except where internal activities lead to transboundary impacts. “When environmental damage negatively impacts people, a question arises about whether the hardship it imposes violates their human rights, including the right to a healthy environment.”¹¹ Notions underlying human rights law, including the idea that some individual rights are so inviolable that their abridgement is of international concern, provide “the formal legal basis for intervention into another state’s serious human rights violations regardless of where they occur.”¹² As a result, human rights legal framework may provide opportunities for the enforcement of transnational environmental rights that do not ordinarily create transboundary impacts. Mushkat’s conceptualization of environmental protections in the context of the fundamental human right to a healthy environment is not entirely novel. Nevertheless, the discussion provides great insight as to the implications of the conjunction of environmental and human rights law in

⁵ Roda Mushkat, “Culture and International Law: Universalism v. Relativism” (2002) 6 S.J.I.C.L. 1028 at 1030.

⁶ Mushkat, *supra* note 2 at 3.

⁷ *Ibid.* at 11.

⁸ *Ibid.*

⁹ *Ibid.* at 13.

¹⁰ *Ibid.* at 11.

¹¹ Hari M. Osofsky, “Learning from Environmental Justice: A New Model for International Environmental Rights” (2005) 24 *Stan. Env’tl.L.J.* 71.

¹² *Ibid.*

Asia, where the situation is complicated by “the legacy of colonialism and the ongoing North-South power imbalances [which] hang over the use of the terms *development* and *rights*.”¹³

Mushkat finds little, if any, influence of “uniquely Asian” values on attitudes toward trade liberalization and globalization. Recognizing Asia as an “amalgam of developed, industrializing, least developed, and transition economies”¹⁴ whose individual countries are motivated largely by their particular economic circumstances, Mushkat posits that some generalities are nevertheless discernable. First, “[p]erhaps more than any other part of the world, the Asia Pacific region represents a firm commitment to rapid economic growth through policies designed to capitalize on the trend towards globalization.”¹⁵ As a result, unilaterally-imposed environmental conditions on trade and globalization are likely to be received with widespread rejection and resentment. Second, Mushkat rejects the contention that the high mobility of multinational corporations (MNCs) situated in Asia has resulted in an environmental “race to the bottom” (i.e. the degeneration of environmental standards to attract and maintain mobile MNCs seeking to avoid environmental regulatory constraints by locating in poor countries with low standards and poor supervision). According to Mushkat this notion is “refuted with evidence that the vast majority of MNCs from post-industrial economies have adopted [...] environmental management practices that [...] far exceed the requirements of government regulation or the practices of domestic companies in host countries.”¹⁶ Finally, Mushkat argues that globalization, in conjunction with trends toward “increasingly democratic governance”, can be expected to foster increased government accountability in Asia on issues related to the environment, and encourage equity-based development¹⁷.

Mushkat’s economic analysis provides the most compelling answer to the work’s central question. The author concludes that “globally shaped norms that are seemingly at variance with culturally entrenched short-term economic imperatives are generally accepted.”¹⁸ Mushkat argues convincingly that the extent to which the idea of Asian cultural values has conceptual usefulness in the context of international environmental law is largely (though not wholly) subjugated at the global scale by more relevant conceptual frameworks, especially those involving comparative economic advantage and development. The most compelling evidence marshalled in support of this idea is the extent to which Asian nations are “harmonizing with global prescriptions”, i.e. are “not developing a distinct regional system of environmental norms defined by its own set of values.”¹⁹ According to Mushkat, although particularized cultural values in Asia seem to have limited functional influence on the

¹³ *Ibid.*

¹⁴ Mushkat, *supra* note 2 at 100.

¹⁵ *Ibid.* at 111.

¹⁶ *Ibid.* at 87.

¹⁷ *Ibid.* at 115.

¹⁸ *Ibid.* at 127.

¹⁹ *Ibid.* at 118. The appendices, which contain inventories of Asian Pacific nations that have been members of major international (Appendix 1) and regional (Appendix 2) environmental conventions and agreements, provide a useful guide to the development of transnational environmental regulation in Asia.

adoption of global environmental norms, “it is arguable that, to a large extent, the implementation of international environmental norms through the domestic courts is dependent more upon the attitude of the courts than on the formal features of the legal or constitutional system.”²⁰

However, several unresolved issues remain. Prominent among them is the extent to which emerging ecosystem services models of environmental protection can quickly gain traction in Asia. Although not specifically discussed, Mushkat’s analysis would suggest that by accessing Asian economic values emphasizing free trade and globalization, the implementation of environmental laws might be strengthened if enforcement procedures were conceived as critical components in the process of cultivating and managing natural areas for human economic benefit.

In summary, Mushkat substantially advances our understanding of the adoption and implementation of international environmental laws in Asia, and usefully elucidates the influence of Asian cultural norms at the local, national, and regional levels.

²⁰ *Ibid.* at 53.