The Global Transformation of Environmental Law

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Eighteen months ago in early April 2010 no one could have anticipated the cataclysmic events that have rocked the environment since then – the worst oil spill in U.S. history caused by the Deepwater Horizon blowout, an earthquake and tsunami triggering a catastrophic nuclear accident at Japan’s Fukushima Daiichi plant, and the takeover of the U.S. House of Representatives by ideological opponents of environmental regulation. Yet when one casts a broader gaze around the world, there are renewed signs of hope for the planet’s environment. Countries continue to strengthen their environmental standards even in the face of global economic uncertainty. Non-governmental organizations (NGOs) are playing increasingly important roles in shaping environmental policy even in developing countries. The failure to achieve global consensus on legally-binding standards for controlling greenhouse gas emissions has not stopped important initiatives by states and the European Union (EU) to respond to the growing problem of climate change.

This address surveys areas in which globalization is profoundly affecting the development of environmental law and policy. Countries increasingly are borrowing law and regulatory innovations from one another to respond to common environmental problems. Nearly all countries have now banned tetraethyl lead in gasoline and, with a few notable exceptions, most have banned the use of asbestos. The EU’s REACH program for comprehensive registration and testing of chemicals is having impacts that extend far beyond the EU’s borders. Multinational corporations are being pressured to assume greater responsibility for policing their supply chains in developing countries as NGO transparency initiatives spotlight their suppliers’ environmental records. Transnational litigation to hold multinational corporations liable for environmental harm caused abroad has upended the long-standing notion that companies are better off battling to keep such suits out of their home courts.

As we approach 2012, the 40th anniversary of the Stockholm Conference on the Human Environment and the 20th anniversary of the Rio Earth Summit, global environmental law is truly at a crossroads. A new generation of environmental lawyers is emerging around the world and a strong global network of environmental law professors is developing to prepare this generation to meet the challenge of protecting the planet in an era of globalization.