

2009

Economic Development and Environmental Threats: Tipping the Balance in Venezuela

Lauren Sanchez-Murphy
Loyola University Chicago, School of Law

Follow this and additional works at: <http://lawcommons.luc.edu/lucilr>

 Part of the [International Law Commons](#)

Recommended Citation

Lauren Sanchez-Murphy *Economic Development and Environmental Threats: Tipping the Balance in Venezuela*, 7 Loy. U. Chi. Int'l L. Rev. 73 (2009).

Available at: <http://lawcommons.luc.edu/lucilr/vol7/iss1/6>

This Student Article is brought to you for free and open access by LAW eCommons. It has been accepted for inclusion in Loyola University Chicago International Law Review by an authorized administrator of LAW eCommons. For more information, please contact law-library@luc.edu.

ECONOMIC DEVELOPMENT AND ENVIRONMENTAL THREATS: TIPPING THE BALANCE IN VENEZUELA

Lauren Sanchez-Murphy[†]

I. Introduction

“We are an oil producing country and that obligates us to take even more care of the environment—on an extreme level—and to avoid contamination, and to reduce contamination in all areas: earth, water and air.”¹ The balance between developing an economic market and protecting human and environmental rights is a crucial issue that has received worldwide attention. This issue is particularly pronounced in developing nations where the over-exploitation of natural resources by industrialized nations or transnational corporations is a constant threat.

Latin America holds some of the largest oil and natural gas deposits in the world, as well as a thriving ethanol industry. Appropriately nicknamed “black gold,” oil continues to be the most important resource of the twenty-first century. Unfortunately, the scarcity of oil has prompted energy markets to search for new resources, often leading to problems where the resources are improperly extracted and managed. In the last twenty years, Latin America has invested greatly in energy resource exploration and production, and despite the increased trade and investment therein, aid provided by foreign nations and international corporations has unfortunately led to many problems because of improper risk mitigation.² Furthermore, experts estimated in 1996 that the next thirty years could bring environmental liability claims approximating \$40 billion in damages, which will primarily include clean-up costs.³ In addition, the region has been plagued by increasing numbers of injuries, theft, hijackings, and natural disasters.⁴ It is essential for Latin American countries to guard against these potential risks and prepare measures to compensate for damages while simultaneously preventing economic, human, and environmental harm.⁵

Latin American governments strive to create strong economic foundations for their countries, hoping to become independent from other foreign nations and

[†] J.D., Loyola University Chicago, expected May 2010.

¹ Eva Golinger, *Venezuela's Green Agenda: Chávez Should be Named the “Environmental President”*, VENEZ. ANALYSIS, Feb. 27, 2007, <http://www.venezuelanalysis.com/analysis/2244> (arguing that although Venezuela is home to one of the world's largest petroleum industries, President Chávez understands the need for environmental protection through combating deforestation and sustainable development) (quoting President Chávez, Feb. 24, 2007).

² Ricardo J. Cata, *Emerging Markets Liability in Latin America*, 27 U. MIAMI INTER-AM. L. REV. 509, 544 (1996) (comparing the improvements in energy exploitation against the problems in Latin America).

³ *Id.* at 528.

⁴ *Id.* at 510-511.

⁵ *Id.*

Tipping the Balance in Venezuela

corporations. However, due to the sensitive ecosystems of the region, oil and natural gas extraction requires a great amount of care because each stage of petroleum production carries severe environmental consequences—the manufacturing facilities, for example, are primary emitters of toxic pollutants and greenhouse gases.⁶ Whether concern for the environment is lacking or education regarding the maintenance and consequences of petroleum production is inadequate in Latin America, petroleum and chemical additives are freely discharged into the environment, excess gas is burned off without emission control, petroleum spills from every type of container are frequent, and pipelines “prone to spills” are untreated and poorly maintained.⁷

Venezuela is one of the world’s largest oil-producing nations, boasting 99 billion barrels of crude oil and 171 trillion cubic feet of natural gas reserves.⁸ The state also estimates 260 billion barrels of heavy crude lies in the center of the country in the Orinoco belt.⁹ Within the past few years, the country’s president, Hugo Chávez, launched two ambitious natural gas projects. One is a \$20 billion pipeline stretching 5,600 miles, which is almost the entire length of South America, and the other is a \$200 million pipeline bringing gas and oil to Central America.¹⁰ The main goal of these projects is to assure economic and energy independence for South and Central America; however, if these projects are carried out negligently or without proper supervision and training, they could potentially present numerous risks to environmental and human rights.

This article discusses Venezuela’s ambitious energy projects, their effects on the environment and the environmental legal issues that may emerge. First, this article discusses the laws that establish environmental protection, including United Nations’ declarations, customary international law and the Venezuelan Constitution. Second, the article will examine Venezuela’s current political regime and its effect on oil and gas production, and the country’s pipeline projects and their potential effects on the environment. Finally, the article will discuss these projects in relation to environmental laws and whether they outweigh the need for Latin American economic integration and independence.

⁶ Santiago A. Cueto, *Oil’s Not Well in Latin America: Curing the Shortcomings of the Current International Environmental Law Regime in Dealing with Industrial Oil Pollution in Latin America Through Codes of Conduct*, 11 FLA. J. INT’L L. 585, 592-93 (1997) (examining the shortcomings of the present environmental regulatory system and suggesting as an alternative, voluntary codes of conduct and the economic and political transformation in Latin America).

⁷ *Id.* at 593.

⁸ ENERGY INFORMATION ADMINISTRATION [EIA], COUNTRY ANALYSIS BRIEFS: VENEZUELA, 2, 7 (2009), <http://www.eia.doe.gov/cabs/Venezuela/pdf.pdf> (providing Venezuela’s energy statistics).

⁹ Nikolas Kozloff, HUGO CHÁVEZ: OIL, POLITICS, AND THE CHALLENGE TO THE U.S. 7 (Palgrave MacMillan 2006).

¹⁰ *Chávez Calls for More Unity in South America*, CNN (Dec. 12, 2006), <http://www.cnn.com/2006/WORLD/americas/12/08/chavez.ap/index.html>; Greg Morsbach, Gas Pipeline Begins in Venezuela, BBC NEWS, July 9, 2006, <http://news.bbc.co.uk/go/pr/fr/-/2/hi/americas/5161968.stm>. [hereinafter Morsbach, *Gas Pipeline*].

II. International Environmental Legal Framework

Environmental protection and economic development are connected through a cause and effect relationship—economic development is a primary cause of environmental destruction.¹¹ Undervalued resources, under-represented benefits of environmental protection, the parties exhausting resources rarely pay full social and economic costs, over-exploited resources suffering from the weakest ownership, depletion being encouraged over conservation, and failure to include depletion of natural capital in national income all contribute to the destructive cause and effect relationship between economy and environment.¹² Although there is increased global concern for the environment and many countries have initiated environmental legislation, most States continue to value economic development over environmental protection.

Although many Latin American nations have enacted new laws protecting the environment from the threats posed by petroleum and gas production, effectiveness and enforcement are wanting. The Inter-American Development Bank has denounced the new environmental legislation for failing to “fulfill the basic function of defining national environmental policy and establishing legal mechanisms to enforce it.”¹³ To help correct this problem, the United Nations has offered a framework laying down basic legal principles, which several Latin American countries have adopted.¹⁴ The greatest challenges to the success of these new laws are effectiveness and enforcement—although they appear to address environmental legal issues, they are merely suggestions for providing environmental protection.¹⁵

When addressing environmental law in Latin America, the first question is, “Where do we actually find the law?”¹⁶ Latin America has a historically weak environmental record for several reasons. First, state ownership of industry is typical. This requires the government to run a company and maximize profits while adhering to its environmental policies, which could result in the government imposing penalties on itself for non-compliance.¹⁷ Second, jurisdictional problems may lead to confusing and contradictory environmental regulation, making compliance difficult for corporations attempting to boost the economy

¹¹ David Eugene Bell, *The 1992 Convention on Biological Diversity: The Continuing Significance of U.S. Objections at the Earth Summit*, 26 GEO. WASH. J. INT’L L. & ECON. 479, 488-89 (1993) (examining the importance of biological diversity to the human environment and the development of the Biodiversity Convention).

¹² *Id.* at 489.

¹³ Cueto, *supra* note 6, at 598.

¹⁴ *Id.* at 598-99.

¹⁵ *Id.* at 599.

¹⁶ Pamela M. Giblin, Statement, Symposium, *Energy and International Law: Development, Litigation, and Regulation*, 36 TEX. INT’L L. J. 1, 43 (2001) (discussing environmental regulation in Latin America).

¹⁷ Armin Rosencranz, Richard Campbell & David A. O’Neil, *Rio Plus Five: Environmental Protection and Free Trade in Latin America*, 9 GEO. INT’L ENVTL. L. REV. 527, 529-30 (1997) (assessing the relationship between recent developments in Latin American environmental law and international trade).

Tipping the Balance in Venezuela

while conforming to regulations.¹⁸ Third, even if environmental legislation is adequate, Latin American nations may be so determined to achieve economic growth that legal enforcement may become subordinate.¹⁹

The United Nations addressed the global need to balance economic development and environmental protection in developing nations through the Stockholm Declaration (1972) and the Rio de Janeiro Declaration (1992).²⁰ Another source of U.N. law is the Basel Convention (1989), a treaty meant to regulate the transnational transportation of hazardous waste.²¹ Customary international law may also apply to the exploitation and transnational transportation of energy resources if it is determined that the methods employed common practice used by a general community of states.²² Finally, the Venezuelan Constitution, which was rewritten in 1999, includes specific provisions protecting environmental and indigenous rights, providing the right to legal redress if violations occur.²³

In 1972, the United Nations Conference on the Human Environment was held, which was the world's first multilateral environmental conference to provide principles guiding environmental legislation.²⁴ At this time, the Stockholm Declaration was adopted, supporting the basic concept of balancing environmental policies with economic development.²⁵ However, the Stockholm Declaration recognized that developing nations needed greater freedom to exploit their resources and allowed them to invite investors to increase economic development as long as it did not cause environmental damage to other nations.²⁶ Important goals of the Stockholm Declaration included:

- (1) Development plans should be compatible with sound ecology;
- (2) adequate environmental conditions could best be ensured by promoting development at both the national and international level;
- (3) the sovereign right of each country should be fully respected;
- (4) environmental policies should avoid adverse effects on the development possibilities of develop-

¹⁸ *Id.* at 530.

¹⁹ *Id.*

²⁰ Giblin, *supra* note 16, at 601.

²¹ Sejal Choski, *The Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal: 1999 Protocol on Liability and Compensation*, 28 *ECOLOGICAL L.Q.* 509, 510 (2001) (discussing the background to the Convention and current relevant provisions regulating the transportation of hazardous waste).

²² Maura Mullen de Bolívar, *A Comparison of Protecting the Environmental Interests of Latin-American Indigenous Communities From Transnational Corporations Under International Human Rights and Environmental Law*, 8 *J. TRANSNAT'L L. & POL'Y* 105, 115 (1998) (discussing the use of contemporary human rights and environmental law principles by indigenous peoples to protect their natural environment from damage caused by hazardous activities conducted by transnational corporations).

²³ CONSTITUCIÓN DE LA REPÚBLICA BOLIVARIANA DE VENEZUELA arts. 127-129, available at http://www.analitica.com/bitlioteca/venezuela/constitucion_ingles.pdf.

²⁴ Mullen de Bolívar, *supra* note 22, at 127.

²⁵ Bell, *supra* note 11, at 493.

²⁶ *Id.*; Karen M. Schwab, *Added Hope for the Amazon Rainforest*, 15 *HOUS. J. INT'L L.* 163, 178-79 (1992) (discussing the extent to which the developed world can influence environmental policy regarding the rainforest, focusing on United Nations policies, credit extension, and the jurisdictional bounds of United States based litigation).

Tipping the Balance in Venezuela

ing countries, including their international trade position, international development assistance, and the transfer of technology; and (5) and action plan and action proposals should promote programs designed to assist the developing countries, including the provision of additional technical assistance and financial resources.²⁷

The Stockholm Declaration provides principles and recommendations for environmental treaties and legislation based on the goals stated above.²⁸ An important provision of the Stockholm Declaration is Principle 21, which states that nations have the “sovereign right to exploit their own resources,” but prohibits causing damage to other nations.²⁹ Although this is contradictory in nature, the Stockholm Declaration merely provides guidelines for a nation to establish environmental legislation and is therefore not legally binding, permitting nations to continue their current policies.³⁰

Although not legally binding, the Stockholm Declaration encouraged international cooperation in environmental protection policies. It also urged developed nations to provide aid to less developed nations lacking the ability to develop economically while simultaneously ensuring environmental protection.³¹ Moreover, the Stockholm Declaration argues that “education in environmental matters . . . is essential in order to broaden the basis for an enlightened opinion and responsible conduct by individuals.”³² It is clear that education at the individual level is important for environmental protection, which can be achieved by providing aid to under-developed nations in furtherance of the global environmental protection effort. Based on the recommendation from the United Nations, many countries initiated multilateral treaties and international negotiations in order to cooperate and establish successful environmental practices to reduce ecological destruction.³³

Until the middle of the nineteen-eighties, treaties after the 1972 Stockholm Declaration addressed the “first generation” of environmental problems, which included air, water and soil pollution caused by industry, poverty and underdevelopment.³⁴ The “second generation” of environmental problems involved global warming, ozone depletion, climate change, desertification, habitat protection, protection of the environment during armed conflict, and international transport of toxic chemicals and hazardous waste.³⁵ Due to the sheer size and global

²⁷ Bell, *supra* note 11, at 493-94.

²⁸ *Id.* at 494.

²⁹ Declaration of the United Nations Conference on the Human Environment, June 16, 1972, 11 I.L.M. 1416, 824 U.N.T.S. 216 [hereinafter Stockholm Declaration].

³⁰ Schwab, *supra* note 26, at 178-79; Bell, *supra* note 11, at 495.

³¹ Stockholm Declaration, *supra* note 29, princs. 22, 24; see Mullen de Bolívar, *supra* note 22, at 127 (explaining that the declaration calls for financial and technological aid to underdeveloped countries).

³² Stockholm Declaration, *supra* note 29, princ. 19.

³³ Andronico O. Adede, *The Treaty System From Stockholm (1972) to Rio de Janeiro (1992)*, 13 PACE ENVTL. L. REV. 33, 34, 44 (1995) (discussing the changes in international environmental treaties beginning with the Stockholm Declaration and ending with the Rio de Janeiro Conference).

³⁴ *Id.* at 34, 37.

³⁵ *Id.* at 37.

Tipping the Balance in Venezuela

nature of the problems, most countries felt the only effective mechanism by which to initiate environmental change was global unity, which ultimately resulted in the 1992 Rio de Janeiro United Nations Conference on Environment and Development.³⁶ The transition period between the Stockholm Declaration in 1972 and the Rio de Janeiro Declaration in 1992 led to a different type of treaty that focused on providing monetary aid and new technologies to developing nations, as well as encouraging them to participate in the creation and organization of new treaties.³⁷

The Rio Declaration reaffirmed the Stockholm Declaration and included twenty-seven principles calling for international unity to combat the new generation of environmental problems by means of “a new and equitable global partnership through the creation of new levels of cooperation among states.”³⁸ Both declarations continued to allow States to exploit their own natural resources and encourage economic development, so long as it abides by environmental protection policies.³⁹

The Stockholm and Rio Declarations embody the common belief that industrialized nations should aid underdeveloped nations to encourage unified, cooperative and global protection of the environment. However, the Rio Declaration is far more specific regarding the obligations of industrialized nations, stating that, “developed countries acknowledge the responsibility that they bear in the international pursuit of sustainable development in view of the pressures their societies place on the global environment and of the technologies and financial resources they command.”⁴⁰ In Principle 15, States are required to prevent environmental destruction where there are “serious or irreversible” threats even where scientific study is lacking; postponing the reverse of environmental degradation will nonetheless be prohibited.⁴¹ Although rooted in ethics, this Principle finds that “it is better to prevent harm than to treat or cure it.”⁴²

Principle 22 is one of the most innovative in the Rio Declaration as it specifically protects indigenous rights, including their identity, which is closely linked to the natural environment. Principle 22 requires States to recognize and protect the cultures of indigenous peoples by allowing them to participate in the environ-

³⁶ *Id.* at 37-38.

³⁷ *Id.* at 47-48.

³⁸ Bell, *supra* note 11, at 499; Report of the United Nations Conference on Environment and Development, June 14, 1992, 31 I.L.M. 874, 1660 U.N.T.S. 3 [hereinafter Rio Declaration].

³⁹ Bell, *supra* note 11, at 499.

⁴⁰ See Scott Holwick, *Transnational Corporate Behavior and Its Disparate and Unjust Effects on the Indigenous Cultures and the Environment of Developing Nations: Jota v. Texaco, a Case Study*, 11 COLO. J. INT'L L. ENVTL. L. & POL'Y 183, 216-17 (2000) (discussing the potential remedies available to disadvantaged people in nations whose natural resources are exploited by transnational corporations); see also Bell, *supra* note 11, at 499; Rio Declaration, *supra* note 38, princ. 7.

⁴¹ Rio Declaration, *supra* note 38, princ. 15.

⁴² Francis N. Botchway, *The Context of Trans-Boundary Energy Resource Exploitation: The Environment, the State and the Methods*, 14 COLO. J. INT'L ENVTL. L. & POL'Y 191, 213 (2003) (arguing that environmental imperatives, especially regarding sustainable development, are critical to the success of any joint exploitation of a shared resource and that the combination of state politics, environment, and business ideas is indispensable for the successful execution of joint energy projects).

Tipping the Balance in Venezuela

mental protection of their land.⁴³ This Principle is similar to Principle 19 in the Stockholm Declaration, which stipulates that education and transferring effective environmental protection methods should not only be exchanged between governments, but also at the individual and grassroots level. Although indigenous rights have only received attention recently, this Principle ensures greater protection and understanding of indigenous groups, including their identity and culture.

The Stockholm and Rio Declarations responded to increasing environmental problems due to industrial development by providing a framework which integrated environmental protection in trade negotiations and treaties. Although both promote environmental protection, they protect State sovereignty and allow nations to continue using their previous environmental policies and enforcement mechanisms.

Another international legal framework aimed at protecting the environment is the 1989 Basel Convention, which was promulgated to limit transnational trade waste, prohibit the export of waste to non-member nations, and prohibit transnational shipment of wastes without consent from importing and exporting nations.⁴⁴ Consumer demand and industrial production have been the primary causes of hazardous waste, which has increased exponentially in the last century—by 1990 the total annual global production of hazardous waste rose to 300 million metric tons.⁴⁵ Due to lower costs and more lenient environmental regulation and enforcement, it is common for industrialized nations to dump waste in developing nations, referred to as “toxic terrorism”.⁴⁶ Industrialized nations have been able to profit from developing nations’ weak economic structures and lack of technology to properly manage waste, which has led to severe problems in soil and water pollution, human morbidity, and devastating environmental problems in these nations.⁴⁷

The Basel Convention’s major components address human health and the environment, differential treatment, prior informed consent, regional centers, financing, compliance, and liability schemes, creating a strong framework to establish environmental justice that previous legislation failed to provide.⁴⁸ The Basel Convention has three objectives: first, to minimize the amount of worldwide waste; second, to promote disposal close to the source of the generation;

⁴³ Rio Declaration, *supra* note 38, princ. 22.

⁴⁴ United Nations Environment Programme Conference of Plenipotentiaries on the Global Convention on the Control of Transboundary Movements of Hazardous Wastes, March 22, 1989, 28 I.L.M. 649, 1673 U.N.T.S. 57 [hereinafter Basel Convention].

⁴⁵ Choski, *supra* note 21, at 512; Russel M. Lazega, *NAFTA Accession and Environmental Protection: The Prospects for an “Earth Friendly” Integration of Latin American Nations Into the North American Trading Bloc*, 5 J. TRANSNAT’L L. & POL’Y 315, 337 (1996) (addressing environmental issues in trade negotiations, as well as NAFTA and its integration into Latin America).

⁴⁶ Choski, *supra* note 21, at 513, 515.

⁴⁷ *Id.* at 515.

⁴⁸ Lisa Widawsky, *In My Backyard: How Enabling Hazardous Waste Trade to Developing Nations Can Improve the Basel Convention’s Ability to Achieve Environmental Justice*, 38 ENVTL. L. 577, 593 (2008) (discussing the need to address and fix the weaknesses of the Basel Convention and encourage developing nations to utilize better methods to handle hazardous wastes).

Tipping the Balance in Venezuela

and, third, to encourage environmentally sound management and disposal of waste.⁴⁹

Similar to the Stockholm and Rio de Janeiro Declarations, the Basel Convention provides that differential treatment is necessary for developing nations to ensure a more equal distribution of environmental benefits and burdens.⁵⁰ The treaty states that the transnational movement of hazardous waste shall be allowed only if the exporting state is unable to suitably dispose of the waste in an environmentally safe manner or where the waste is a raw material required for recycling or recovery industries in the importing nation.⁵¹ In addition, the Basel Convention mandates prior informed consent, requiring full disclosure regarding potential waste exports before any shipment of hazardous waste is permitted.⁵² This requirement has received praise for adopting the precautionary principle,⁵³ which requires the exporting state to provide all the information about the characteristics of the wastes and allows the importing state to consent, refuse, or impose restrictions.⁵⁴ The Basel Convention's provisions regarding finance, compliance, and liability provide the framework for legal remedies for treaty violations and encourage industrialized nations to provide aid to developing nations.⁵⁵ The Basel Convention advances environmental justice by providing developing nations greater power in the decision-making process and perhaps reducing their environmental problems.⁵⁶

Although the Basel Convention has been lauded for promoting and advancing environmental law and protection, it has received severe criticism as well. Critics of the treaty argue that it has failed to establish a financial mechanism to minimize damage from hazardous waste accidents, resulting in problems where the party responsible for the damage is unknown or unable to provide sufficient money to reverse the damage.⁵⁷ In addition, the treaty usually relies on the parties' good faith and cooperation because it lacks a formal enforcement authority.⁵⁸ Finally, environmentalists argue that the Basel Convention failed to meet its goals because there has been no reduction in hazardous waste.⁵⁹ However, although critics of the Basel Convention maintain that it has been unable to achieve environmental justice, it has brought greater worldwide attention to environmental threats.

⁴⁹ Choski, *supra* note 21, at 516-17.

⁵⁰ Widawsky, *supra* note 48, at 596.

⁵¹ Basel Convention, *supra* note 44, art. 4.9.

⁵² Widawsky, *supra* note 48, at 596.

⁵³ The Precautionary Principle will be discussed in greater detail later in the article.

⁵⁴ Widawsky, *supra* note 48, at 602.

⁵⁵ *Id.* at 599-602.

⁵⁶ *Id.* at 602.

⁵⁷ Choski, *supra* note 21, at 518.

⁵⁸ *Id.* at 519.

⁵⁹ *Id.* at 520.

Tipping the Balance in Venezuela

Customary international law is found where there is a general practice in a community of States and it becomes binding through repetition and acceptance.⁶⁰ Therefore, it is essential that the community of States believe it is actually required by international law and that no State should be exempt.⁶¹ Some customary international law will attain the status of “jus cogens,” found where a practice represents a fundamental value absolutely necessary for mankind to coexist in the international community. Examples of jus cogens norms include the prohibitions on piracy and slavery, the right to life and protection against the arbitrary deprivation of life, and prohibitions against genocide, war crimes, crimes against humanity, the use of force, torture, and apartheid.⁶²

Two customary international legal principles that are increasingly important in environmental protection are the precautionary principle and the polluter-pays principle.⁶³ The precautionary principle states that where an activity poses a threat to human or environmental health, even without scientific evidence, cost-effective measures should be taken to prevent that threat.⁶⁴ The polluter-pays principle states that where the polluter has caused environmental harm, it must bear the costs rather than pass them on to future generations or those immediately affected by the damage.⁶⁵ Although these principles aim to prevent environmental harm, they are not free from criticism because they are based on ethics rather than clear legal obligations.⁶⁶ Legal precedent governing entities that engage in activities threatening environmental harm is scarce, and therefore, moral and ethical responsibility provides a basis to establish liability when violations of environmental international law occur.⁶⁷

Some theorists argue that enforcing environmental international law would be more effective through the development of codes of conduct regulating the behavior of pollutant industries that operate in ecologically-sensitive regions.⁶⁸ Codes of conduct create valuable standards and tools to guide transnational corporations attempting to develop a geographical region where risks of severe environmental damage are present. Typically, these codes seek to offer the best of both worlds: they include a canon of ethics and statements promising to limit exploitation in nations where corporations could operate, while also promoting corporate needs.⁶⁹ These codes have been successful because they allow for self-

⁶⁰ Mullen de Bolívar, *supra* note 22, at 115.

⁶¹ *Id.*

⁶² *Id.*

⁶³ Widawksy, *supra* note 48, at 586.

⁶⁴ *Id.* at 584.

⁶⁵ *Id.*

⁶⁶ See Botchway, *supra* note 42, at 212-13. The author criticizes the Rio Declaration's implementation of the precautionary principle because she finds it to be only a “normative prescription” rather than providing a clear legal duty. The author further believes that the polluter-pays theory is inadequate in situations where there is a joint cooperative effort to exploit a resource and the proportion and extent of each party's pollution is difficult to ascertain.

⁶⁷ See Holwick, *supra* note 40, at 186.

⁶⁸ Cueto, *supra* note 6, at 607.

⁶⁹ *Id.* at 608-09.

Tipping the Balance in Venezuela

regulation, which is argued to be more effective in regions where enforcement mechanisms in environmental legislation are weak.⁷⁰ Unlike treaties, codes can be specifically tailored to a particular industry or environmental region. This is particularly useful for oil companies operating in Latin America and can provide a balance between corporations' needs to maximize profits and developing nations' needs to develop economically while protecting their delicate ecological systems.⁷¹ These codes may also adopt customary international legal principles, such as the precautionary and polluter-pays principle, which could provide the framework for establishing binding legal obligations and environmental legislation.

Although the international laws discussed above provide legal frameworks for environmental justice, they often protect State sovereignty, lack enforcement mechanisms, or are too general to establish clear legal obligations. In Latin America, there are several new, leftist regimes that have provided legislation specifically protecting the environment.⁷² In 1999, the Venezuelan president, Hugo Chávez, called for a new "Bolivarian" Constitution based on his leftist ideologies that guaranteed many social and economic rights and incorporated progressive provisions protect human rights.⁷³

Title III, Chapter Nine of the new Constitution specifically protects environmental rights and establishes legal obligations on the State.⁷⁴ The Constitution includes a provision that establishes an obligation to protect the natural environment where indigenous communities inhabit because their culture and livelihood depends on the health and protection of the environment.⁷⁵ The Constitution also states with particularity that when the State engages in negotiations involving natural resources, it is required to protect the environment and restore the environment to its "natural state" if altered.⁷⁶ The Constitution also appears to contain the precautionary principle and states, "any activities capable of generating damage to ecosystems must be preceded by environmental and sociocultural impact studies."⁷⁷ These two last provisions are very reminiscent of the polluter-pays and precautionary principles, although both establish clear obligations unlike the general customary principles from which they are derived. Although many international experts praise the efforts to provide affirmative legal protections to the environment through the Constitution, its effectiveness has been

⁷⁰ *Id.* at 608.

⁷¹ *Id.* at 609.

⁷² See Daniel Denvir & Thea Riofrancos, *How Green is the Latin American Left? A Look at Ecuador, Venezuela and Bolivia*, UPSIDE DOWN WORLD, Apr. 3, 2008, <http://upside-downworld.org/main/content/view/full/1203/1/> (examining the neoliberal policies of Ecuador, Venezuela and Bolivia and their effect on the environment, and how these three countries are addressing the problems of global warming, pollution and control of natural resources).

⁷³ Daniel Hellinger, *Venezuela*, in *POLITICS OF LATIN AMERICA: THE POWER GAME* 469, 484 (Harry E. Vanden & Gary Prevost eds., Oxford University Press 2006).

⁷⁴ CONSTITUCIÓN DE LA REPÚBLICA BOLIVARIANA DE VENEZUELA arts. 127-29.

⁷⁵ *Id.* art. 120.

⁷⁶ *Id.* art. 129, cl. 2.

⁷⁷ *Id.* art. 129, cl. 1.

Tipping the Balance in Venezuela

questioned because it is argued that Chávez has attempted to politicize the judiciary.⁷⁸

The international community provides various sources of law that could govern the construction, maintenance, and production of natural gas and oil projects. However, these sources may not provide adequate relief as they are non-binding and they protect state sovereignty. Most of these laws have been praised for visionary appeal and equally criticized for failing to provide a legal framework suitable to actually hold parties accountable.⁷⁹ The new Venezuelan Constitution may help bridge this gap—it not only institutes a legal duty on the State or a foreign entity to protect the environment, but also provides for relief and accountability.

III. Venezuela

A. Current Political Situation and its Effect on the Energy Industry

Hugo Chávez is undoubtedly the most notorious leader of South America. Chávez has outspokenly criticized the United States,⁸⁰ is one of the first leaders of a mixed racial background and is therefore heralded as a hero of the indigenous classes,⁸¹ and he has initiated bold energy projects throughout Latin America to bring economic independence to his country and the rest of the region.⁸² President Chávez began his rise to political power in early 1992 when he led a coup against the Venezuelan president at the time, Marcos Pérez Jiménez.⁸³ Although the coup was unsuccessful, Chávez announced that he and his comrades had only failed “for now.”⁸⁴ Chavez’s prediction was realized in 1993 when Congress ousted President Pérez, and the interim President freed Chávez from prison, allowing him to finally run for the presidency, ultimately resulting in his election in 1998.⁸⁵

Upon assuming office, Chávez immediately overhauled the former Venezuelan administration, starting with a new constitution that renamed the country the Bolivarian Republic of Venezuela.⁸⁶ The Bolivarian Revolution’s objective is

⁷⁸ Hellinger, *supra* note 73, at 485.

⁷⁹ Cueto, *supra* note 6, at 611.

⁸⁰ Kozloff, *supra* note 9, at 3 (noting Chávez’s challenges against U.S. trade initiatives, the war in Iraq, and the drug war in Latin America).

⁸¹ *Id.* at 13, 18.

⁸² Harold A. Trinkunas, *What Is Really New About Venezuela’s Bolivarian Foreign Policy?*, 5 STRATEGIC INSIGHTS 2, ¶ 15-16 (2006), <http://www.nps.edu/Academics/centers/ccc/publications/OnlineJournal/2006/Feb/trinkunasFeb06.pdf> (explaining President Chávez’s political and energy agendas, such as the South American energy alliance, Petrosur); see also Greg Morsbach, *Venezuela Basks in Oil “Bonanza”*, BBC NEWS, Feb. 17, 2006, <http://news.bbc.co.uk/go/pr/fr/-/1/hi/world/americas/4713404.stm> [hereinafter Morsbach, *Venezuela Basks*] (stating that Venezuela’s initiatives are to “integrate South America’s energy sector, to become more self-sufficient and less dependent on the United States”).

⁸³ Hellinger, *supra* note 73, at 478.

⁸⁴ *Id.* at 481.

⁸⁵ *Id.* at 481-82.

⁸⁶ *Id.* at 484.

Tipping the Balance in Venezuela

rooted in its foreign policy to obtain allies wishing to limit the power of the United States and increase the influence of Latin America.⁸⁷ Chávez, aware that his political power and economic leverage is based in the country's deep oil and natural gas reserves, has stated that "oil is a geopolitical weapon."⁸⁸ Although a relatively small country, Venezuela boasts some of the largest oil and natural gas reserves throughout the world and remains one of the top ten oil producers in the world.⁸⁹

Prior to nationalizing the energy sector, the Venezuelan government allowed private companies to contract with the government to obtain rights for the exploration and production of oil.⁹⁰ The Venezuelan oil industry was nationalized on January 1, 1976, which provided the State the rights to explore, produce, transport, store, refine, export, and sell all oil and gas through the state-run companies PDVSA and PDVSA Gas, S.A.⁹¹ However, nationalization changed very little—private companies were still granted production and exploration concessions and a substantial amount of power remained in foreign hands.⁹²

When Chávez assumed power, he undertook a controversial enterprise to change the laws governing the country's oil industry. Chávez has sought to achieve "Full Sovereignty Over Oil," which focuses on the State obtaining control over the oil industry and receiving a greater return for all oil endeavors.⁹³ Chávez's administration hopes to "deactivate domination mechanisms" set in place by the previous administration and the private companies that controlled oil production and exploration.⁹⁴ Since assuming office, Chávez announced that the private oil companies would be required to pay much higher income taxes to the State and that PDVSA would be given a 60 percent stake in the new ventures.⁹⁵ Stricter nationalization standards have been followed by a course of national wealth distribution in various public programs, including health care, education, pensions, and employment.⁹⁶ The challenges against the foreign companies have been largely successful because the foreign companies virtually have no choice

⁸⁷ Trinkunas, *supra* note 82, at ¶ 6.

⁸⁸ Kozloff, *supra* note 9, at 7.

⁸⁹ EIA, *supra* note 8, at 1.

⁹⁰ Seth McNew, "Full Sovereignty Over Oil": A Discussion of Venezuelan Oil Policy and Possible Consequences of Recent Changes, 14 L. & BUS. REV. AM. 149, 150 (2008) (analyzing the history of the Venezuelan oil industry, the changes made by Chávez, and the repercussions of those changes on foreign oil investment within the country).

⁹¹ Uisdean R. Vass & Adriana Lezcano, *The New Venezuelan Legal Regime for Natural Gas: A Hopeful New Beginning?*, 36 TEX. INT'L L.J. 99, 103 (2001) (examining the economic and historic aspects of the Venezuelan gas business, the 1999 Constitution and new legislation affecting the industry).

⁹² McNew, *supra* note 90, at 150-51.

⁹³ *Id.* at 149.

⁹⁴ *Id.* at 153.

⁹⁵ *Id.* at 154.

⁹⁶ Mario J. García-Serra, *The "Enabling Law": The Demise of the Separation of Powers in Hugo Chávez's Venezuela*, 32 U. MIAMI INTER-AM. L. REV. 265, 287, 275 (2001) (analyzing the new Venezuelan Constitution and explaining that President Chávez has taken advantage of his immense popularity by granting himself powers inconsistent with the new constitutional provisions, which could have devastating effects on Venezuela's future political and economic development).

Tipping the Balance in Venezuela

but to accept the new terms if they wish to continue operating in Venezuela—those that have refused to acquiesce to the framework have had their oil fields seized by the State.⁹⁷ The nationalized energy sector grants the Chávez administration an opportunity to achieve greater control over the oil and natural gas industries as well as initiate new public programs.

B. Venezuela's Natural Gas Industry

Although oil has dominated the Venezuelan economy, “[it] will gradually run out around the world and more and more countries will turn to gas,” a resource that Venezuela also boasts plentiful reserves of.⁹⁸ Although the Chávez administration leans heavily towards nationalization, it passed the Gas Hydrocarbons Law in 1999, which opens natural gas production to the private sector, in an effort to develop and expand the industry.⁹⁹

Venezuela has begun extracting natural gas and initiating several large-scale projects, several of which involve constructing transboundary mega-pipelines.¹⁰⁰ Two of the largest and most controversial pipelines are the Antonio Ricaurte Trans-Oceanic Gas Pipeline, to connect Venezuela, Colombia and other Caribbean nations,¹⁰¹ and the Southern Gas Pipeline, which, planned to run through Venezuela, Brazil and Argentina, has been called the world's largest gas pipeline.¹⁰²

The 225 kilometer Antonio Ricaurte Trans-Oceanic Gas Pipeline¹⁰³ will also extend to Panama, Ecuador and the Pacific in order to facilitate increased trade with Asian countries.¹⁰⁴ Experts stipulate that the purpose of the pipeline is to completely diminish reliance on the United States and find an equal trading partner in Asia.¹⁰⁵ The pipeline will run along the border between Colombia and Venezuela, which is home to many indigenous communities.¹⁰⁶ Although there

⁹⁷ McNew, *supra* note 90, at 155.

⁹⁸ Morsbach, *Venezuela Basks*, *supra* note 82.

⁹⁹ EIA, *supra* note 8, at 7.

¹⁰⁰ See Morsbach, *Venezuela Basks*, *supra* note 82 (explaining that Venezuela's massive spending on energy projects is to increase economic integration in South America's energy sector and diminish its dependence on the United States).

¹⁰¹ Chris Carlson, *Venezuela and Colombia Launch Gas Pipeline*, VENEZ. ANALYSIS, Oct. 15, 2007, <http://www.venezuelanalysis.com/news/2730>.

¹⁰² Kelly Hearn, *World's Largest Gas Pipeline Proposed to Run Through Amazon*, NAT'L GEOGRAPHIC, Jan. 4, 2007, <http://news.nationalgeographic.com/news/pf/92421538.html>.

¹⁰³ Press Release, Chevron, *Chevron and Ecopetrol Signed Contract with PDVSA to Export Natural Gas from Colombia to Venezuela (May 13, 2007)*, available at <http://www.chevron.com/news/press/Release/?id=2007-5-13> (explaining the agreement between Chevron and PDVSA for the pipeline, which will deliver gas from Colombia to Venezuela and contemplates a future agreement for the delivery of gas from Venezuela to Colombia).

¹⁰⁴ Carlson, *supra* note 101.

¹⁰⁵ Morsbach, *Gas Pipeline*, *supra* note 10.

¹⁰⁶ Carlson, *supra* note 101.

Tipping the Balance in Venezuela

is continuing criticism regarding the environmental consequences, a great deal of the money invested was used for social spending programs.¹⁰⁷

The Southern Gas Pipeline, on the other hand, has received immense criticism because it is proposed to run through several ecologically-sensitive regions, including the Amazon rainforest.¹⁰⁸ The pipeline is intended to extend about 8,000 kilometers and the cost has been estimated at about \$21 billion.¹⁰⁹ Although the government has addressed the environmental and social concerns, it argues that economic independence and integration should move forward and asserts that the pipeline will help prevent gas shortages.¹¹⁰ Although there are many interested investors, many doubt the project will ever be completed because of the project's sheer size and magnitude.¹¹¹ In addition, experts state that Chávez's geopolitical goals may take priority and blind him to the environmental and social problems that could arise.¹¹²

Activist groups opposing the construction of the pipeline argue that there are great threats to farming and fishing communities located near the site of the pipeline and assert that the government has not offered sufficient proof that the gas pipeline is sustainable in the long run or economically viable to outweigh the environmental dangers.¹¹³ Greenpeace declared that construction of the pipeline will not only devastate the least-developed and least-studied areas of the rainforest, but the surge of construction workers will bring new diseases to the region that could be dangerous to remote indigenous communities such as those inhabiting the Guyana region, which has been referred to as the "planet's lungs."¹¹⁴ Although it is argued that natural gas is safer for the environment, critics of the Southern Gas Pipeline point to the example of the Camisea Gas Pipeline in Peru where, in its short life-span, four major spills have already plagued the region and caused serious damage to the environment and local communities.¹¹⁵ Natural gas, though argued to be less detrimental to the environment, still "poses greater operational risks, contributes to global warming just as oil does, will lead to deforestation all along the pipeline route, and is vulnerable to natural disasters or acts of sabotage."¹¹⁶

¹⁰⁷ *Id.*

¹⁰⁸ Hearn, *supra* note 102.

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

¹¹¹ *Chávez Calls for More Unity in South America*, *supra* note 10.

¹¹² Jens Erik Gould, *Plan for South American Pipeline Has Ambitions Beyond Gas*, N.Y. TIMES, Dec. 2, 2006, <http://www.nytimes.com/2006/12/02/business/worldbusiness/02venezpipe.html> (explaining that the pipeline is not only to stimulate economic integration in Latin America but also to reduce dependence on the United States and create a geopolitical energy bloc).

¹¹³ Hearn, *supra* note 102.

¹¹⁴ Gould, *supra* note 112.

¹¹⁵ Humberto Márquez, *South America: Mega-Pipeline Bashed as Unsafe, Unneeded*, INTER PRESS SERVICE, Feb. 22, 2006 (LEXIS) (discussing the Southern Gas Pipeline and the economic, political and environmental issues raised as a result of its construction).

¹¹⁶ Humberto Márquez, *Mega-Population—Costly and Controversial*, VENEZ. ANALYSIS, Feb. 25, 2006, <http://www.venezuelanalysis.com/analysis/1636> (addressing the dangers stemming from the construction of the Southern Gas Pipeline).

Tipping the Balance in Venezuela

C. The Natural Gas Industry and its Effect on the Environment

Although the Venezuelan economy is based almost entirely on the environmentally-dangerous oil and natural gas industries, President Chávez has paid increasing attention to the environment and global warming.¹¹⁷ For example, his administration initiated a program called “Misión Arbol” to combat deforestation and encourage community-based sustainable development to help preserve Venezuelan forests.¹¹⁸ In addition, PDVSA announced it would eliminate lead-based gasoline and has developed a plan to help recuperate and preserve the environment, decontaminate rivers, lakes and land, and reduce emissions.¹¹⁹ Chávez requires the use of energy-efficient light bulbs in all government buildings and has initiated a large-scale plan to distribute those same bulbs to poor Venezuelan neighborhoods.¹²⁰

The government has initiated several programs aimed at environmental protection, decontamination, and sustainable development; unfortunately, there are lingering fears about the future of Venezuela’s environment. Many experts note that although the government’s intentions and rhetoric promote environmental protection, the administration has been limited in its ability to carry out its promises.¹²¹ There is an ongoing environmental crisis in Venezuela due to various problems, including “poor government decisions, an inept and corrupt bureaucracy inherited from past administrations, the economic legacy of three quarters century old oil economy, the political and economic global order along with the historical weakness of environmental movements.”¹²²

In particular, many fear the environmental and social repercussions stemming from the construction of the Southern Gas Pipeline because it would involve razing huge amounts of the Amazon Rainforest and developing ecologically-sensitive coastal areas.¹²³ Due to the ecological threats and doubts about sustainability, several directors and investors have been hesitant to continue participation even though the administration and its supporters remain adamant that the pipeline will yield economic and industrial benefits that outweigh the environmental threats.¹²⁴ Analysts have concluded that the myriad of potential environmental consequences was the catalyst to halt the construction of the pipe-

¹¹⁷ Denvir & Riofrancos, *supra* note 72, ¶ 57.

¹¹⁸ Golinger, *supra* note 1, ¶ 3.

¹¹⁹ *Id.* ¶ 5.

¹²⁰ Denvir & Riofrancos, *supra* note 72, ¶ 57; Golinger, *supra* note 1, ¶ 7.

¹²¹ Interview by Nikolas Kozloff with Jorge Hinestroza, Professor of Sociology, University of Zulia, General Coordinator, Federation of Zulia Ecologists (Oct. 9, 2006), available at <http://www.venezuelanalysis.com/analysis/1997> (providing insight to the various contradictions within the Chávez administration regarding its environmental policies).

¹²² Denvir & Riofrancos, *supra* note 72, ¶ 40.

¹²³ Sebastian Kennedy & Martin Markovitz, *Green Revolution? Venezuela's Socialist Reforms Float on a Sea of Oil*, 22 EARTH ISLAND J. 55, ¶ 26, Sept. 22, 2007, available at 2007 WL 19305334 (discussing President Chávez’s social, economic and legislative reforms and how he will be able to fund a socialist revolution to address the problems of climate change).

¹²⁴ *Id.* ¶¶ 26, 30.

Tipping the Balance in Venezuela

line, which has, *for now*, interrupted Chávez's dream of South American economic integration and unification.¹²⁵

Venezuela's main source of economic wealth is also its main source of environmental destruction—the energy industry. Although the Chávez administration has initiated environmental programs and reforms, there is “something of a Catch-22: Venezuela looks set to suffer environmentally, economically, or both.”¹²⁶ Although Chávez has provided many new protections and guaranteed many new rights to the environment, several of his projects, such as the mega-pipeline projects, are likely to cause environmental damage and disrupt many local communities.¹²⁷ Chávez's determination to unify and integrate the South American economy also opens the way for environmentally destructive projects and social exploitation.¹²⁸

D. The Venezuelan Environmental Legal Framework

Economic integration, independence, and unification are the ultimate goals for Venezuela. However, these goals threaten the environment and the local communities that are dependent upon its sustainability, protection and safety. Although President Chávez promises to protect the environment, it may be impossible for him to achieve economic success and environmental protection at the same time. Should an environmental catastrophe result from the Venezuelan projects, it will be necessary to determine what legal standards are available to achieve environmental justice.

In the international context, the three laws promulgated by the United Nations, the Stockholm Declaration, the Rio Declaration and the Basel Convention, offer possible legal rights and protections should industrial development cause environmental damage. The Stockholm Declaration focuses on air, water, and oil pollution arising from environmentally dangerous industrial activities and calls for the creation of new treaties based on the legal framework provided.¹²⁹ Water pollution is one of the most devastating effects of improperly maintained petroleum pipelines as illustrated by an environmental disaster in Ecuador, where, by 1992, more than thirty billion gallons of untreated waste were discharged directly into bodies of water that were the primary sources of potable water and fishing for the local indigenous communities.¹³⁰ In addition, the construction of these mega-pipelines will result in harm to renewable natural resources by causing great amounts of deforestation as well as disruption to the farming and fishing communities.¹³¹ If this occurs, Venezuela could be in direct violation of the

¹²⁵ *Id.* ¶ 29.

¹²⁶ *Id.* ¶ 9.

¹²⁷ *Denvir & Riofrancos*, *supra* note 72, ¶¶ 41-43.

¹²⁸ *Id.*

¹²⁹ *Adede*, *supra* note 33, at 34, 44.

¹³⁰ *Holwick*, *supra* note 40, at 200-01.

¹³¹ *Hearn*, *supra* note 102.

Tipping the Balance in Venezuela

Stockholm Declaration because it asserts, "vital renewable resources must be maintained and, wherever practicable, restored or improved."¹³²

The Rio Declaration focuses on global cooperation to achieve sustainable development, which would protect the future by preserving state sovereignty while prohibiting states from causing damage to outside nations.¹³³ Several of Venezuela's new initiatives involve transnational pipelines, which could cause serious environmental damage to coastal regions in Colombia or Panama as well as in the Amazon in Brazil.¹³⁴ However, the Rio Declaration could also protect construction of the pipelines projects because it states that a worldwide goal is to eliminate poverty and equalize the standards of living for all social classes.¹³⁵ President Chávez has made it very clear that the pipelines would pave the way for Latin American economic independence, stimulation, and integration.

The Basel Convention focuses more particularly on the transboundary movement and disposal of wastes.¹³⁶ Similar to the effect of the Rio Declaration, Venezuela must be careful when it begins construction of its gas pipelines because they carry environmentally dangerous waste across boundaries. Unfortunately, this treaty has been widely criticized for being "long on rhetoric and short on substance and effectiveness."¹³⁷ At present time, the Basel Convention is unlikely to be an effective method to establish environmental legal liability due to various problems.¹³⁸ Therefore, the Stockholm and Rio Declarations and the Basel Conventions are likely to be inadequate mechanisms to enforce environmental justice.¹³⁹

The customary legal principles discussed above, the precautionary principle, and the polluter-pays principle, also provide possible grounds for environmental protection. Basically, the precautionary principle espouses the idea that it is better to prevent harm than to treat it.¹⁴⁰ The polluter-pays principle encourages entities causing environmental damage to pay the full cost of the damage.¹⁴¹ Unfortunately, these principles would also be unlikely to provide adequate legal protection to those affected by damage caused by Venezuela's pipeline project.

¹³² Stockholm Declaration, *supra* note 29, princ. 3.

¹³³ Rio Declaration, *supra* note 38, princs. 1-2.

¹³⁴ Kennedy & Markovitz, *supra* note 123, ¶ 26.

¹³⁵ Rio Declaration, *supra* note 38, princ. 5.

¹³⁶ Choski, *supra* note 21, at 510.

¹³⁷ Widawsky, *supra* note 48, at 581 (quoting Peter Obstler, *Toward a Working Solution to Global Pollution: Importing CERCLA to Regulate the Export of Hazardous Waste*, 16 YALE J. INT'L L. 73, 94 (1991)).

¹³⁸ See Choski, *supra* note 21, at 518, for an explanation of the Basel Convention's criticisms.

¹³⁹ "[T]here is no United Nations instrument that expressly confers an internationally-binding human right in relation to the environment." Holwick, *supra* note 40, at 215. The Basel Convention has no formal policing mechanism, fails to provide an authority to enforce compliance, and uses vague terms when describing environmental protection. See Choski, *supra* note 21, at 519.

¹⁴⁰ Botchway, *supra* note 42, at 213.

¹⁴¹ *Id.* at 212.

Tipping the Balance in Venezuela

The problems warned of by these principles¹⁴² are very likely to become realities if an environmental accident occurs during the construction or maintenance of the transboundary pipelines.

International codes of conduct are very similar to customary legal principles and offer potential methods to establish specific legal obligations and rights. These can be helpful because they can be more narrowly tailored to the particular needs of the environment and industry.¹⁴³ This option may prove beneficial to all Latin American countries involved with the pipeline projects because they are all interested in promoting economic interests and protecting their own natural environments, unlike parties that are transnational corporations that are primarily interested in economic gain. Although there is increasing “moral responsibility” concerning the protection of the environment, legal precedent regarding violations of international environmental legal codes is scarce and may not offer a suitable avenue for achieving environmental protection and justice.¹⁴⁴

Should one of Venezuela’s natural gas pipeline projects result in a massive environmental disaster, the best option for enforcing environmental rights and the rights of those affected by the damage is to allege liability based on violations of Venezuela’s 1999 Constitution. The new Constitution includes provisions protecting the environment and land where local communities are dependent upon its preservation.¹⁴⁵ The new Constitution was drafted only ten years ago and Venezuelan jurists continue to search for a working legal system to provide justice to the people.¹⁴⁶ Previously, the Venezuelan legal system was only available to those able to afford legal representation; now the State offers legal protection to all citizens and provides more judges in the Supreme Court, increasing its capacity to hear more cases.¹⁴⁷ Due to the combination of greater constitutional protections over the environment and increased access to Venezuelan tribunals, environmental justice may be ascertainable under the new Constitution.

Although many international jurists praise the efforts to reform the Venezuelan legal system, having been plagued by severe corruption in the past, there is ongoing debate as to whether it is simply a way for Chávez to control the judiciary.¹⁴⁸ Since the 1999 Constitution, over three hundred judges have been dismissed or suspended for various reasons, such as slowing the judicial process and taking bribes.¹⁴⁹ However, those who oppose Chávez argue that the reasons

¹⁴² See *id.* at 212, 214 (explaining that there are problems regarding the polluter-pays principle when there are more than two entities involved in the effort to exploit the resource and with the precautionary principle where there are different economic levels of the parties involved).

¹⁴³ Cueto, *supra* note 6, at 609.

¹⁴⁴ See Holwick, *supra* note 40, at 186.

¹⁴⁵ CONSTITUCIÓN DE LA REPÚBLICA BOLIVARIANA DE VENEZUELA arts. 120, 127-129.

¹⁴⁶ Interview by Michael Albert with Fernando Ramón Vegas Torrealba, Justice, Venezuelan Supreme Court, in Venezuela (Sept. 24, 2009), available at <http://www.zcommunications.org/znet/view/Article/18887> (explaining the role of the law and legal system in the Bolivarian Revolution).

¹⁴⁷ *Id.*

¹⁴⁸ Hellinger, *supra* note 73, at 485.

¹⁴⁹ Lauren Castaldi, *Judicial Independence Threatened in Venezuela: The Removal of Venezuelan Judges and the Complications of Rule of Law Reform*, 37 GEO. J. INT’L L. 477, 479-80 (2006) (discussing

Tipping the Balance in Venezuela

were pre-textual and that these were moves to politicize the judiciary.¹⁵⁰ Many judges fear dismissal for disagreeing with President Chávez, who has shown “scant regard for the rule of law” through tearing up contracts and refusing to negotiate.¹⁵¹ In addition, although there are explicit provisions protecting the environment and indigenous peoples, legal analysis of the new Constitution has been an ongoing challenge due to lack of legal interpretation.¹⁵² Although the Constitution offers greater legal protection and the new legal system offers greater access to justice without corruption, the judiciary may simply be a tool of the Chávez administration, and justice may not be awarded if environmental damage is caused by a State-run project.

IV. Conclusion

Venezuela’s mega-pipeline projects have been lauded as Latin America’s economic savior, offering independence, integration, and unification. Although impressive, these projects threaten the area’s delicate ecosystems, including huge tracts of the Amazon Rainforest, Caribbean coastal systems, and innumerable fresh water sources. Supporters of the projects contend that the environmental risks are minimal and the economic advantages tip the balance in favor of industrial development. Alternatively, the environmental threats include deforestation, air, water and soil pollution, and disruption of natural environments, which local indigenous communities depend upon to survive.

Upon completion of the pipeline projects, a multitude of dangers will emerge that could result in severe environmental devastation, such as spills, leaks, and improper maintenance. Although the international laws promulgated by the United Nations may not offer adequate legal redress, international customary laws included in industry-specific codes of conduct may be more successful. However, these codes lack legal precedent and their enforcement could be based on moral responsibility rather than legal obligation. Ultimately, the most effective option for redressing environmental damage in Venezuela would be a suit brought under violations of its own Constitution. There is lingering doubt regarding the independence of the judiciary; however, Venezuelan jurists are still in the process of determining the most effective legal system and could provide an adequate forum and legal framework to eventually offer environmental justice.

whether the constitutional modifications are a good faith effort to bolster the rule of law and eliminate corruption or an underhanded attempt by the current administration to procure more political power and control).

¹⁵⁰ *Id.*

¹⁵¹ *Chávez Squeezes the Oil Firms*, *ECONOMIST*, Nov. 12, 2005 (LEXIS).

¹⁵² Vass & Lezcano, *supra* note 91, at 101.