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The International Law of Pollution: Protecting the Global Environment in a World of Sovereign States

Bruce H. Wildsmith

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Reviews

The International Law of Pollution: Protecting the Global Environment in a World of Sovereign States. By Allen L. Springer. Westport, Conn.: Quorum Books, 1983. Pp. xiv, 218. (\$37.50).

A good book must have focus. This may not be the only criteria for evaluating a book, but it is certainly a *sine qua non*. A scholarly work such as Professor Springer's is a means of communicating ideas; the sharper its focus the clearer the message of its author and the better it and he communicates. When reading this book I wondered about its focus: was there a central unified objective? Having now completed the book, I can see that the author has painted us a useful, but blurred picture. He has not quite brought into focus his objective; much valuable information and many good ideas are obscured by the lack of a clear thesis. The book is not a repository or summing up of law; it does not provide reform or future-oriented suggestions; it does not argue for a particular point. What it does do is provide much interesting description on the theme of international pollution. But this is not the focus suggested by the author himself.

In his "Introduction" Professor Springer decries the "mass of ad hoc studies" in international environmental law which he feels has resulted in "a patchwork field created by individuals whose primary interests lie elsewhere". What is lacking is "any kind of systematic approach to the central questions of international environmental law"; what Professor Springer says his book attempts is "to create a more useful framework for the study of international environmental law through a detailed analysis of 'pollution'". He reemphasizes this objective by concluding his "Introduction" with the statement that "a clearer understanding is needed of how the pollution limits are and should be defined and of the nature of the process by which adherence to them is made to seem obligatory. By developing a comprehensive analytical framework for the discussion of pollution, this book attempts to contribute to that understanding."

Taking the book's own self-professed objective, one might be justified in anticipating that the author would pass beyond the descriptive to offer his views on how pollution limits should be defined and on how the international community ought to

systematically deal with pollution. While a summing up of international environmental or pollution law might be a laudable objective, the author seems not to promise us this but rather something of a more future-oriented, normalistic nature. These types of “should” or “ought to be” questions are never brought into focus; our view of the international law of pollution remains blurred.

A key chapter is number 4 (of 6), “Setting More Precise Limits”. It begins with a quote: “The matter of standards is really the fundamental question in all discussion of pollution”, and goes on to say that “‘Ecostandards’ are needed to give . . . general limits the specificity required for an effective legal regime.” The key is to determine “the point at which the label ‘pollution’ should be attached”, with resulting legal consequences. After an interesting discussion of how the international community has tackled this problem, Professor Springer concludes that the “diversity of standard-setting approaches makes it difficult to isolate trends that are developing in international practice”. He advocates “imaginative procedures” like a particular one used by IMCO and then shifts his focus onto the next chapter. It was at this point that I felt the most disappointment. I had expected a contribution toward the resolution of a very difficult problem: how ought the international community go about setting pollution limits, legally binding and otherwise? Professor Springer leaves us with the impression that the problem is complicated and has been handled in a variety of ways on a case-by-case, *ad hoc* basis, and that we should be imaginative. His discussion gives us many ideas, but nowhere does he pull them together into the systematic analytic framework he in his “Introduction” suggests to be important. The promise held out by the chapter title is unfulfilled.

A similar criticism may be levelled at chapter 5, “The Evolving Law of State Responsibility for Pollution”, the longest (61 pages and 345 notes) and most law-oriented chapter in the book. Professor Springer begins by noting that “‘pollution’ is a legally significant term because conduct that violates the prescribed threshold ought to give rise to legal consequences”. He also tells us that “the central argument of this chapter is that no preventive regime can succeed over time without the firm foundation provided by the development of rules of state responsibility that remove existing defenses to state liability and that create significant penalties for the actual violation

of pollution thresholds". He then gives us through numerous examples from international treaties a very good discussion of the problems, methods of approach and types of state responsibilities related to pollution. In his summary of the chapter he concludes that law is important both to resolve differences and "as a mediating force . . . to establish a basis on which the disputes that will arise can be decided". In other words, it helps to know the rules and that they can be enforced before you negotiate a resolution. I had expected from this chapter a hard-nosed, lawyer-like analysis of exactly what the present state of international environmental law is and what kinds of non-consensual rules should be developed to deal with recalcitrant states. Of course not very much is accomplished in the international community without consensus and agreement, but as in any negotiating process the parties' perceptions of rights and obligations play an important role. I came away from this chapter with the impression that there was little solid ground for a rights-oriented environmentalist to stand on. Reference is made, for example, to "the general principles of good neighbourliness and equitable utilization", and Professor Springer seems to advocate adjudication so that these principles "can acquire the substance and definition they presently lack". Yet when Professor Springer introduces the principle of good neighbourliness, he does so in the context of strict liability. He refers to several decisions of international tribunals which "not unambiguously . . . provide support" for good neighbourliness as a strict liability concept, Professor Springer is himself ambiguous as to his judgment of how solid the ground provided by the principle of good neighbourliness is as one on which to base international liability for pollution. Why does he leave the principle of good neighbourliness for introduction with strict liability? Good neighbourliness may be a fault related concept, but Professor Springer does not discuss this in his earlier discussion of fault. Indeed, despite several references to the principle of good neighbourliness, it is not given anywhere in the book a central place. So what does he consider its status to be?

One final point of criticism. Chapter 6 must be seen as an attempt to provide a specific example of the application of the international law of pollution. This one would expect because the subject matter of the book is pollution and Chapter 6 is a case study. It is titled "Case Study: Licensing the Eastport Oil Refinery" and intends to examine "the debate created by the project [the location

of an oil refinery at Eastport, Maine] by analyzing briefly the legal positions of each state [U.S. and Canada] and then looking at the ways in which Maine's Board of Environmental Protection (BEP) and the U.S. Environmental Protection Agency have attempted to take Canadian concerns into account in the licensing process". When one reads further to find out what the legal issues and Canadian concerns are, one finds that "at the centre of the international controversy is a basic disagreement between the United States and Canada about both the legal status of Head Harbor Passage and the degree of control Canada can exercise over ships passing through it". While there is a Canadian concern about oil pollution from tanker traffic through the passage, this is subordinate to the international legal issues of how the channel is to be classified and what restrictions Canada could place on tanker passage as a result. Why choose this as a case study in a book on international pollution? The answer is not clear. In fairness Professor Springer seems to only claim that this example is used to reflect on the effectiveness of a cooperative approach to transboundary environmental issues. But I for one wonder why he did not choose an example which clearly featured transboundary pollution centrally in the legal debate.

It is easy to practice the critic's craft by attacking the work of others: nothing is perfect and differences of opinion easily arise. Hence I think it important for the reader of this review (is anyone still there?) not to be persuaded by my comments to by-pass this volume. It is, despite weaknesses, a useful and interesting book. In addition to the chapters I have already mentioned, the book contains: "The Global Setting", "International Environmental Law" and "Toward A Meaningful Concept of Pollution". While I still feel the book offers too few solutions, it is a well-written, coherent and absorbing account of the problems involved and the approaches adopted in handling international pollution. It is particularly good in acclimatizing the reader to the host of international organizations (there is a helpful list of abbreviations at the outset) and the roles they play in this field, and in bringing to the reader's attention many international treaties and other source documents that touch on environmental protection. The author believes in extensive references to support, explain or amplify his statements with the result that the book is well-documented, with an extensive bibliography.

While this book does not provide the focused analytical framework I had hoped, I do recommend it as a welcome addition to the literature on international environmental problems.

Bruce H. Wildsmith
Faculty of Law
Dalhousie University

The Consolidated Treaty Series, 1648-1918. Edited and annotated by Clive Parry. Dobbs Ferry, New York: Oceana Publications, 1969-1981. 231 Volumes, and 3 Volumes of Indices.

The Consolidated Treaty Series was a twelve year publishing project undertaken by the distinguished Cambridge international law professor Dr. Clive Parry. The treaty series contains reprints and translations of over 10,000 treaties signed between 1648, the establishment of the modern European state system, and 1919 when the *League of Nations Treaty Series*, the first official international collection, commenced publication.

Each treaty is reproduced in its original language accompanied by French or English translations where such exist. Where a translation does not exist a summary of the contents of the treaty is included. Most importantly the source from which the treaty was obtained is noted, as are alternative sources for the text. Many of the treaties are printed in German, Dutch, Latin and Spanish and where translations into French or English do not exist a translation is provided only when the treaty is of primary importance.

The major sources of treaties drawn upon by Dr. Parry were *Martens*, which commences in 1760 and contains many of the European treaties, and *Répertoire Général des Traités*, which covers the period from 1895 to the League of Nations. The final series is relied upon to the extent that the last 50 volumes of *The Consolidated Treaty Series* adopts a different format using briefer headings and abbreviations for the sources. A table of the abbreviations, similar to that found in *Répertoire Général des Traités*, is at the beginning of each of the last 50 volumes.

A number of indexes are to be published to facilitate using the multi-volumed series. Thus far, however, only one volume has been published.

For Dr. Parry, who died in September 1982, this major contribution to international legal scholarship culminated a lifetime of work in the international area. Dr. Parry was the editor and compiler of the *British Digest of International Law*, a study that required thorough examination of the tons of documents of the British Foreign Office. Parry was the author of numerous treatises on international law, including *British Nationality Law* (1950) and *The Sources and Evidence of International Law* (1965). These works and others ensured Dr. Parry's reputation as a premiere scholar of international law.

In perusing *The Consolidated Treaty Series* a number of interesting and historically important treaties can be noted. The Treaty of Ghent which ended the U.S.-British War of 1812 and shaped relations on the North American continent for half a century is in Volume 63 at page 421. An agreement between France and Great Britain returning Acadia to France signed in Boston in 1670 is in Volume 11 at page 317. Three treaties signed in Quebec City between France and the Iroquois are reproduced in Volume 9 at pages 163, 209 and 363.

There exist numerous treaties between the United States and Great Britain concerning fishing rights in the North Atlantic including the 1854 Reciprocity Treaty (Volume 112 at page 31). There are a series of treaties between France and Great Britain respecting French rights to use the shores of Newfoundland. See for example Volume 195 at page 205. Another interesting fishing agreement is one concluded in Paris in 1839 between the French and English respecting fishing in their respective waters (Volume 89 at page 221). The agreement, although amended periodically, remained in force until the last decade.

Dr. Parry included in this collection the treaties signed by Texas prior to its agreement in 1845 to join the United States. The Instrument of Merger between Texas and the United States is reprinted in Volume 99 at page 261. In Volume 193 at page 314 the treaty signed in 1903 between Cuba and the United States granting the United States the right to establish a naval base at Guantanamo is found. The U.S. naval base thus established still exists despite the turmoil between Cuba and the U.S.

International boundaries have frequently been the subject matter of treaties. The most important one for Canada is the Treaty between Great Britain and the United States respecting the Demarcation of the International Boundary with Canada, done in

1908 and located in Volume 206 at page 377. One boundary agreement that has raised controversy concerns the delimitation of Passamaquoddy Bay, which was signed in 1910 and can be found in Volume 211 at page 152. In Volume 209 at page 396 is the text of the Award delimiting the Maritime Frontier between Norway and Sweden, given at the Hague on 23 October 1909. This award, known as the Grisbadarna case, is playing an important role in the Canada-U.S. international court dispute on the delimitation of the Gulf of Maine/Georges Bank. Dr. Parry included only the French text of the Grisbadarna award. An English translation can be found in Volume 4 of the *American Journal of International Law* at page 226.

One last treaty to be noted is between Great Britain and Saxe-Coburg-Gothia for the marriage of Queen Victoria and Prince Albert, signed at London on 7 February 1840 and located in Volume 89 at page 477.

The breadth of information, the clarity of organization, and the quality of the reproductions make *The Consolidated Treaty Series* an invaluable research tool for international lawyers and historians and an essential possession for any library.

Ted L. McDorman
Dalhousie Ocean Studies Programme

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