

Book Reviews

Patricia Birnie, Alan Boyle, *International Law and the Environment*, Oxford, Clarendon Press (1992) 563 pages, including Table of cases, Table of major treaties and instruments, Index.

Since its emergence in the late sixties, international law for the protection of the environment has been a remarkable example of international law-making, which is comparable to the success achieved in the field of human rights.

This book aims at assessing the current state of international law concerning the protection of the natural environment. The basis and perspective of international law in this field have considerably changed since the late sixties. From a restricted set of principles of good neighbourliness and resource-sharing applicable to litigation for transboundary pollution, a wide range of rules has been developed to accommodate pollution prevention and protection of the world's natural environment, including areas beyond the jurisdiction of States.

A number of topics have been scrutinized, where the authors concluded that international law had made a major impact, ranging from pollution of the sea and of international watercourses, the international control of hazardous wastes and nuclear energy, to emerging issues of protection of the atmosphere and conservation of living resources.

Part I analyses general principles and customs applicable to environmental issues, such as *prompt notification*, the principle of *causing no appreciable harm*, the *polluter pays principle*, *equal access to natural resources*, as well as traditional mechanisms of dispute settlement which are widely accepted by State practice and jurisprudence. These principles constitute sources of law, and are separated from statements, declarations and guidelines elaborated by international bodies, which do not establish legal obligations – even where included in treaties – but simply orientate the States' behaviour. This body of principles forms part of the so-called 'soft-law', the binding force of which will eventually rest upon confirmation by international practice. The authors rightly share the predominant approach to international law-making which does not invest declarations and political guidelines with inherent legal force. Nevertheless, these instruments evidence an *opinio iuris*, thereby exercising some influence on States' conduct. It might then be expected that the principles stated in the 1992 Rio Declaration on Environment and Development, which gained widespread acceptance in the Rio Conference, will be complied with by States in the future.

Notwithstanding the wide consensus concerning the principles agreed at Rio, it is pointed out that persistent conflicting political aims between developed and developing countries remain a barrier to effective environmental protection. Environmental protection and economic progress must both be accommodated, and both groups of States must bear their responsibilities on the grounds of fairness.

In this context, United Nations specialized agencies and bodies, such as UNEP regional commissions, as well as other international and regional organizations (OECD, EEC, etc.) are

Book Reviews

recognized as having a central role in promoting further international negotiations for the protection of the world's natural environment.

Part II is then devoted to detailing the rules that apply on the international setting, including customary law and treaties regulating specific areas, such as the marine environment and its living resources, endangered migratory species, pollution of international watercourses, the atmosphere and Outer Space, and control of international hazards. In particular, the chapters on the international regulation of ultra-hazardous risks posed respectively by *nuclear activities* and *international trade in hazardous substances and waste* well illustrate the tension between environmental concerns on the one hand, and the need to safeguard economic benefits on the other.

A clear understanding of international law concerning environmental protection is essential to its progress and to the removal of its major limiting factors; these are the diffuse lack of enforcement and supervision, and the inadequate protection of areas of common concern. The authors suggest that scarce implementation by the States of international environmental law in the past indicates a need to develop international institutions capable of ensuring effective compliance and implementation of treaties. However, it emerges that States have generally avoided resort to supranational institutions of enforcement – although this does not mean that State sovereignty has remained unaffected. In addition, the authors lament that national law is still primarily responsible for the assessment of environmental damage and providing redress to victims. They favour civil liability regimes over regimes of State responsibility for environmental harm. The progressive involvement of individuals and environmental groups in the enforcement of international law is also encouraged, as well as the establishment, in the future, of an individual *right to a decent environment* protected by international law.

The book concludes by asserting that public international law provides a framework to develop political and scientific cooperation, harmonize national provisions, and to negotiate measures of economic assistance and realize distributive equity. The experience of the Ozone Convention with its additional protocols represents a pattern of some utility for future negotiations. Moreover, recent experience has demonstrated that international regulation of pollution, national sovereignty over natural resources and economic development are closely interconnected. The major challenge of international law will then consist of adequately addressing '... questions of economic development, the interests of future generations, the provision of financial incentives, technical assistance and technology transfer' with a view to encouraging fair and wide participation of States, while guaranteeing effective protection of the global environment.

Francesca Pestellini
European University Institute, Florence