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Book Review

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There is an Index at the end of each Volume of the *Encyclopedia* which is very helpful with a work of this size. In fact, this should be standard practice with all similar encyclopedias. It is very irritating to have to keep referring to an Index which is in another volume from the one actually being used. Publishers please take note!

It is difficult to write a critical review of this major contribution to environmental law in the United Kingdom. It simply gives us the tools to do the job, no more and no less. It is entirely to be commended. No environmental law practise worthy of the name should be without the *Encyclopedia of Environmental Law*.

Nicholas W. Jones
Environmental Law Team, Eversheds, Norwich.

International Law and the Environment. By PATRICIA W. BIRNIE AND ALAN E. BOYLE [Clarendon Press, Oxford 1993, 563 pp. hardback £50, paperback £25 net]

This book is a valuable and substantial contribution to the 'hornbook'¹ or 'textbook'² tradition of common law scholarship. It examines the principles, structure and effectiveness of international law, *stricto sensu*, as it relates to the environment. The authors aim at offering more than a digest or re-statement of the law by selecting for closer scrutiny a number of subjects in which the 'role and impact of international law has been most evident'. They do so very well.

The accomplished character of the finished product is reflected in the accuracy of its title: 'International Law and the Environment' which gives clear and timely notice that this is a book by international lawyers seeking 'to explore the basic principles, structure, and effectiveness of the *international legal system as it relates to the environment*'.³ The book thereby correctly differentiates itself from examinations of common environmental problems, driven by national and comparative perspectives, that are sometimes dealt with under the heading of 'international environmental law' (IEL).⁴ The present title more accurately identifies its subject areas than other books bearing the somewhat different title 'International Environmental Law' though dealing with the same corpus of law.⁵

When faced with pollution problems it is, of course, eminently desirable for individual countries, who collectively form the community of nations, to understand and study the extent to which they confront common problems shared by other countries. Uniformities in bio-physical reactions are part of nature's writ that runs ubiquitously and universally, and the laws of nature can give rise to identical bio-physical reactions. If, for example, the receiving medium is comparable, discharges of wastes or residuals, whether in Los Angeles, Liverpool, Dusseldorf, or Auckland, lead to pollution. Common bio-physical reactions take place regardless of where in the world the environment is abused. Where the necessary conditions exist, sulphur dioxide and nitrogen oxide will react and result in acidic deposition in the Ruhr, Northern England,

¹ Dr Johnson described the hornbook as 'the first book of children, covered with horn to keep it unsoiled'. Pardon's New English Dictionary (1758) defined it as 'A leaf of written or printed paper pasted on a board, and covered with horn, for children to learn their letters by, and prevent their being torn or daubed'. As the art of printing advanced, the hornbook was supplemented by the primer in the book form we know today. In North America West Publishing Company developed its 'Hornbook Series', a series of scholarly and well respected one volume treatises on particular areas of law. They are widely used by law students, lawyers and judges. See William Rodgers, 'Environmental Law' (West, 1994).

² Outside North America the legal textbook continues to be the staple of law teachers.

³ Preface, emphasis added.

⁴ A noteworthy example is the *International Environmental Reporter* that covers national and international efforts dealing with common environmental problems.

⁵ E.g. Alexander Kiss and Dinah Shelton, 'International Environmental Law', (Dordrecht, 1991); Ludwik Teclaff and Al Utton (Eds) *International Environmental Law* (New York, 1974). The reader is left to make her own judgement about the title of the reviewers own: Guruswamy, Palmer and Weston, *International Environmental Law and World Order* (West, 1994).

or Ohio. Polychlorinated biphenyls (PCBs) act to cause cancers in West Virginia in the same way as they do in Newcastle upon Tyne, UK, or Colombo, Sri Lanka.

While there is much to be learned from the common experiences of other countries the miscellaneous national laws controlling sulphur dioxide emissions and acid rain, or PCBs, do not fall within the proper jurisprudential province of international environmental law (IEL) from an international law perspective. The problems of acid rain or any other pollutant enter the province of international law only if they take on a transfrontier character by crossing national boundaries and causing extra-territorial damage to other countries.

There is little doubt that this book admirably succeeds in its objectives. It is divided into 14 chapters that bear re-iteration in order to obtain an impression of the scope, organization, and strong analytical structure of the book. They deal with: International Law and the Environment; International Organizations and the Formulation of Environmental Law and Policy; The Structure of International Environmental Law I: Rights and Obligations of States; The Structure of International Environmental Law II: Enforcement, Compliance, and Dispute Settlement; The Structure of International Environmental Law III: The Role of National Law and the Right to a Decent Environment; Pollution of International Watercourses; The Law of the Sea and the Regulation of Marine Pollution; The International Control of Hazardous Wastes; Nuclear Energy and the Environment; Protecting the Atmosphere and Outer Space; Principles and Problems of Conservation and Sustainable Use of Living Resources; The Emerging Regime for Conservation of Migratory and Endangered Land-Based Species; Conservation of Marine Living Resources; and Conclusions.

Each of these 14 chapters are diligently and comprehensively researched, tightly reasoned, and economically expressed, while displaying judicious balance and good scholarship. The authors also do an expert job of weaving the general principles of international law—such as the duty not to cause transboundary harm—throughout the specific substantive areas. Any doubts that do arise, pertain to what the book does not do rather than what it accomplishes so well.

First, the book does not deal adequately with the United Nations Conference on Environment and Development (UNCED or Earth Summit) or the very important developments to which it gave birth. The Earth Summit, held in Rio de Janeiro in June 1992, attended by over 180 countries and 100 heads of state, has been heralded as the greatest summit level conference in history. It resulted in (i) the Rio Declaration on Environment and Development; (ii) Agenda 21; (iii) the Non-legally Binding Authoritative Statement of Principles for a Global Consensus on the Management, Conservation and Sustainable Development of All Types of Forests, and (iv) the ceremonial signing of the Climate Change and Biodiversity Conventions.

Post Earth Summit assessments have, for differing reasons, been generally favourable, while a few tend to be almost unreservedly laudatory, even euphoric. Later more considered evaluations are beginning to cast doubts on these reviews. The present book makes hardly any contribution to the post-Rio evaluative process. A review and analysis of the Rio instruments are glaringly absent. While the omission appears all the more conspicuous because the book was published in January 1993 (according to the review notice issued by the publisher) this date, in reality, is something of a fiction. In all probability the book went to press shortly after the Earth Summit. A delay in publication might significantly have enhanced the book by allowing the proven analytical prowess of the authors to bear on what arguably are the most important developments in IEL.

A second point goes to the conceptual premises underlying a book on IEL. International laws, like all laws, reflect the minds and intentions of their law-makers. The precision, extent, and force of legal prescriptions in treaties are the product of human design, not accident. The weight of a legal obligation, duty, or right will depend on the extent to which it commands or demands actions, and cures the perceived mischief by advancing a remedy. The legal and policy responses institutionalized in treaties, are instructed and continuously shaped by our

understanding of the complex bio-physical phenomena causing environmental problems. Whether dealing with hazardous wastes, climate change or biological diversity it is difficult for a student or reader to satisfactorily fathom the legal responses, as is and ought, without understanding the nature, complexity and uncertainties of the scientific evidence upon which laws are crafted. Unfortunately, this book fails to give more than sparse attention to an understanding and appreciation of the underlying scientific premises of the law.

Despite these reservations there is no question that this book makes a substantial contribution to our understanding of the international law relating to the environment. It is one that will prove to be of enormous benefit to every student, lawyer, scholar and policy-maker traversing the field of international environmental law.

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Principles of International Environmental Law, Volume I—Frameworks, Standards and Implementation. By PHILIPPE SANDS [Manchester and New York: Manchester University Press, 1995, lxx + 773 pp. including Index]

This work appears at the latest in the Manchester University Press series, *Studies in international Law*. Few could seriously dispute the prefatory observation of the editors of this series, Vaughan Lowe and Dominic McGoldrick, that

alongside international human rights law, the development of the content and discipline of international environmental law is one of the most remarkable phenomena of modern times.

Their publication of Philippe Sands' book, described as 'the first comprehensive post-UNCED account of one of the fastest-growing areas of international law', is therefore very much to be welcomed. The author has also prepared accompanying volumes of EC and international documents.

Undoubtedly one of the hardest tasks for textbook writers in any area of the law, but particularly one as vast, complex and densely-interrelated as international environmental law, is to impose a coherent structure upon the subject-matter. Although there is plainly scope for debate as to the optimum structure in this area, there can be little doubt that the one adopted by Sands has much to commend it. Like Gaul, the book is divided into three parts. The first, headed 'The legal and institutional framework', comprises five chapters, commencing with a consideration of the place of environmental law within the international legal system and the challenge posed to international society by environmental problems. It is noteworthy in this context that the author plainly subscribed to the view that, at least since UNCED, international environmental law is to be considered as part of the law of sustainable development, although he does not appear to endorse the more pessimistic interpretations of the Rio Declaration regarding the extent to which environmental protection has now been subordinated to developmental aspirations.

The second chapter provides an account of the chronological development of this area of the law, and indeed the book generally displays a strong sense of historical perspective. Chapter 3, rather oddly entitled 'Governance', examines the role of states and other international actors within the system, while Chapter 4—'International law-making and regulation'—embraces an analysis both of the sources of law seen from an environmental perspective and of the divergent approaches to environmental regulation embodied in the 'command-and-control', 'market-based' and 'integrated pollution control' models. The concluding chapter of this part of the book contains a perceptive and wide-ranging discussion of the question of compliance with environmental obligations and the extent to which it can be secured through the range of available legal mechanisms for implementation, enforcement and dispute settlement.