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Book Reviews

Richard A. Frank

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THE INTERNATIONAL LAW OF POLLUTION. By James Barros and Douglas Johnston. New York: Free Press, 1974. Pp. xvii, 476. $12.95.

During the last decade, the awareness has grown that pollution is a collective problem of the world community, not merely a problem of individual countries. As a consequence, the few agreements negotiated prior to 1960 have since been joined by a spate of treaties focusing on ecological issues, and international environmental law has attained both popularity and maturity of development.

Those who specialize in this field will no longer need to contend with their ever-growing loose-leaf collections of materials. *The International Law of Pollution* conveniently puts into one volume the complete texts of, or excerpts from, virtually all of the significant pre-1973 bilateral, regional, and global agreements, international arbitral decisions and court cases (and some of their antecedents from national legal systems), and United Nations General Assembly Resolutions on every facet of the global environment. The intent of the authors, Professors James Barros and Douglas Johnston of the University of Toronto, is to develop a practical research tool for students of international pollution control problems, and this they do.

Barros and Johnston preface their materials with a cursory discussion devoted to the definition and identification of pollutants, the criteria for pollution assessment and control, the difficulties encountered in determining priorities of uses and in concluding mandatory quality standards, and the relationship of national and international law. However, the essential value of the book is simply its compilation of texts frequently used by the practitioner.

Barros and Johnston sensibly divide their materials into sections on state responsibility; pollution of lakes and rivers, of air, and of the oceans; general international cooperation; environmental regulation in international areas; and protection against radiation hazards. The authors have gone beyond a strictly defined environmental field to include a chapter on the prohibition or regulation of ecocidal weapons and weapons of mass destruction, which permits a comparison between progress in that area and in the more traditional environmental fields. The authors also include suggested reading lists. Although it would be hard to fault Barros and John-

ston in general for their selection of materials, they do foresake consistency by reproducing in the section on national court cases only decisions from United States tribunals, and by including in the section on national legislation only foreign laws (thus omitting reference to the United States Federal Water Pollution Control Act[1] or the Ports and Waterways Safety Act of 1972).[2] Regretably, the book does not provide citations for reproduced court decisions or international agreements, so the reader looking for the entire text of excerpted materials will be unable to proceed easily or directly to the complete original source. Moreover, the book does not reveal the status of the various agreements, which often leaves the reader in the dark about which countries are parties and which are not.

In their introduction Barros and Johnston point out that most forms of pollution transcend boundaries; they conclude that unilateral national action is, therefore, an inadequate remedy and that pollution must be treated with a "modern system of international law suitable to the needs of the interdependent world community."[3] But neither their brief commentary nor the body of doctrine, which they reproduce, provides any assurance or even indication that governments together will, in fact, be prepared to conclude meaningful and enforceable environmental rules and regulations or that unilateral action may not be, for the foreseeable future, a more fruitful way to proceed.

This important question of the relative benefits of multilateral and unilateral action can perhaps best be considered in the context of ocean pollution, the most highly developed area of international environmental law. Since 1954, governments have negotiated a variety of treaties oriented toward preventing or mitigating degradation of the seas and coastal zones by oil and other noxious substances emanating from vessels. Since 1969, at least seven treaties have been drafted covering liability, dumping, intentional and accidental discharges, and coastal state rights to react to imminent threats. The primary failings to note are that these agreements have neither directed themselves at the major cause of marine pollution nor adopted standards or enforcement procedures that will lead to cleaner waters.

1. 33 U.S.C. 1251 (Supp. II, 1972).
2. 33 U.S.C. 1221 (Supp. II, 1972).
3. J. BARROS & D. JOHNSTON, THE INTERNATIONAL LAW OF POLLUTION xv (1974).

Land-based sources are by far the most significant cause of marine pollution—some claim that land-based sources are the origin of 80 to 90 per cent of the pollution. Yet, no international conference has been convened to resolve this major portion of the pollution problem. Land-based sources were debated at the 1974 Caracas Law of the Sea Conference and its preparatory meetings, but virtually no government evidenced the inclination to accept precise or enforceable obligations not to pollute from rivers or outfalls, and most seemed unwilling to assume even a general duty or responsibility.

Further and equally disturbing, the series of agreements on marine sources of marine pollution fall short of producing either effective preventive measures or adequate remedial measures. The most recent and acclaimed treaty in the area is the 1973 Convention on the Prevention of Pollution from Ships. Negotiated in London under the auspices of the Intergovernmental Marine Consultative Organization (IMCO), a United Nations specialized agency, the Convention had as its objective the complete elimination of intentional discharges and the prevention of accidental discharges. The delegates to the 1973 conference, however, voted down such an environmentally sound vessel requirement as double bottoms, and were unwilling even to consider such modern means of avoiding polluting accidents as lateral thrusters and variable pitch propellers. Generally, only those standards already in use or those proposed by industry were mandated. The conference did adopt, over industry objection, a requirement that oil tankers over 70,000 tons be constructed with segregated ballasts. (Ballasting water used for stability in empty tankers would, thus, be taken into tanks not used for oil carriage, and the water, when discharged, would not contain oil.) But so as to vitiate the effect of the segregated ballast provision, the Convention makes it applicable only to vessels ordered after January 1976, which would exempt almost all of the world tanker fleet for the next two decades. The convention places primary enforcement responsibility on flag states (the state whose flag the vessel flies), which are notoriously lax in pollution control. The enforcement issue is again being considered at the Law of the Sea Conference, and both developed and aspiring maritime powers are opposed to granting coastal states enforcement jurisdiction.

Moreover, the international community has drafted deficient rules in the area of liability. The 1969 International Convention on

Civil Liability for Oil Pollution Damage set a liability limit of fourteen million dollars, a figure so far below the potential damage from an oil spill that the Convention was summarily rejected by the United States Senate. The negotiators, trying again in 1971, concluded the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, and again adopted an industry guideline, a 30 million dollar limit, which will likely be unacceptable to the Senate. Barros and Johnston predict a broadening of the principle of state responsibility, but delegations at the 1974 Law of the Sea Conference treated suggested provisions on responsibility and liability as if they were polluted matter, not to be touched.

Not only have international standards been defective, but, in some cases, they have hindered the development of environmentally sound national standards. A case in point concerns the 1973 Convention on the Prevention of Pollution from Ships and United States legislation covering the same subject, the Ports and Waterways Safety Act. Under the Ports and Waterways Safety Act, the Coast Guard was instructed to establish construction and operational standards applicable to vessels operating in United States ports and territorial waters. In 1973, the Coast Guard announced their intention to propose a rule that would have required that tankers above 20,000 tons have double bottoms.[4] However, before the rulemaking process had been completed, negotiation of the 1973 Convention was concluded. After the conference, the Coast Guard modified its proposed rule, deleting the double bottom requirement on the grounds, *inter alia,* that deviation from internationally agreed standards would be unwise, even for United States vessels in the protected United States coastwise trade.[5]

The multilateral-unilateral conflict will also arise in connection with liability. The most recent United States law on the subject is the 1973 Trans-Alaska Pipeline Authorization Act[6] which establishes a 100 million dollar liability limit for damage caused by pipeline oil. If the United States should adhere to the 1969 International Convention on Civil Liability for Oil Pollution Damage or the 1971 International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage,

4. 38 Fed. Reg. 2467 (1973).
5. 39 Fed. Reg. 24150 (1974).
6. 43 U.S.C. 1651 (Supp. 1974).

which when combined have an upper limit of approximately 30 million dollars, any effort to pass domestic legislation with higher limits, even though permissible under the Convention, will run afoul of the same argument—that United States unilateral action should not exceed the internationally agreed limit.

Thus, while the concept of a regime composed of minimum international standards, which can be raised and supplemented by unilateral action, is appealing on its face, such a system in practice leads to unsound environmental rules since the minimum international standards (negotiated to satisfy a very low common denominator) become the maximum standards by inducing national inaction.

This is not to suggest that all forms of environmental cooperation are regressive. One, of course, must balance the composite benefit of domestic laws that would be passed in the absence of international action with the fruits of admittedly deficient international rules. While the United States and countries such as Canada (which extended its pollution jurisdiction in its 1970 Arctic Waters Pollution Prevention Act) may adopt strict standards, many countries will not, and an argument can be made that modest worldwide standards would be preferable to the high standards of an environmentally oriented few, with weak or no national regulation elsewhere. On the other hand, since United States trade forms a substantial portion of world trade, standards applicable to vessels coming to or passing the United States could well become the worldwide norm, and the United States coastline itself would be better protected if United States regulations were not inhibited by international rules.

Although broadscale international negotiations have resulted in low-grade agreements, bilateral and regional undertakings have been more promising. The Treaty Relating to Boundary Waters and Questions Arising Along the Boundary between Canada and the United States has generally been a succesful lever in preventing pollution of waters running between the two countries. The Oslo Convention on Control of Marine Pollution by Dumping from Ships and Aircraft, concluded between the countries of that region, is likely to be a more effective tool than the analogous multilateral 1972 International Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter.

Barros and Johnston, in the introduction to the final part of their

book, attribute some of the blame for the unsatisfactory state of international law to the lack of an intergovernmental environmental agency to perform the functions of data collection, promotion, and revocation. They take solace in the remedy they see in the formation of the United Nations Environment Program (UNEP), a specialized agency established after the 1972 Stockholm Conference on the Human Environment. The early hope of the environmental community that UNEP could create a turning point has not been fulfilled so far. Even under an independent and action-oriented Secretary General such as Maurice Strong of Canada, UNEP has been given a limited budget, relegated to a monitoring function, and precluded by industry-oriented agencies such as IMCO from playing any meaningful role in the prevention of marine pollution. The very existence of a bureaucracy with an environmental bent cannot fail to help the cause; however unless UNEP and the responsiveness of governments to it are changed, it will become the weakest member of the United Nations family.

Reading through the pages and pages of agreements and cases in *The International Law of Pollution,* one might assume, from the sheer magnitude, that the world community is on the way toward a comprehensive system protecting the purity of life on earth. It is a modern tragedy that the international law of pollution contains standards that are too low and obligations that are neither monitored nor enforced.

*Richard A. Frank**

* Director of the International Project, Center for Law and Social Policy. Assistant Legal Adviser for Inter-American Affairs, United States Department of State, 1966-68; Assistant Legal Adviser for Economic Affairs, United States Department of State, 1968-69. A.B., 1958, Harvard College; J.D., 1962, Harvard Law School.