

1985

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

Michigan Law Review

Follow this and additional works at: <https://repository.law.umich.edu/mlr>

Part of the [Environmental Law Commons](#), and the [International Law Commons](#)

Recommended Citation

Michigan Law Review, *The International Law of Pollution: Protecting the Global Environment in a World of Sovereign States*, 83 MICH. L. REV. 1036 (1985).

Available at: <https://repository.law.umich.edu/mlr/vol83/iss4/36>

This Review is brought to you for free and open access by the Michigan Law Review at University of Michigan Law School Scholarship Repository. It has been accepted for inclusion in Michigan Law Review by an authorized editor of University of Michigan Law School Scholarship Repository. For more information, please contact mlaw.repository@umich.edu.

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.

The degradation of the environment presents a clear danger to humanity's health and prosperity.¹ As world population grows and the demands of less developed countries (LDCs) increase, more strain will be put on the ecosystem.² Further, pollution problems are not neatly confined within national boundaries; air and water pollutants travel at will across the lines delineating nations. For these reasons, pollution presents serious and pressing international issues. Environmental problems have become global problems. Allen L. Springer's³ book at-

1. See D.H. MEADOWS, D.L. MEADOWS, J. RANDERS & W. BEHRENS, *THE LIMITS TO GROWTH* (1972); J. FORRESTER, *WORLD DYNAMICS* (1971).

2. See, e.g., W. OPHULS, *ECOLOGY AND THE POLITICS OF SCARCITY* (1977) (arguing that there are limits on various resources that will inhibit growth, and that growth has been the way to fulfill rising expectations; an ecological crisis looms as limited resources are pressed even further).

3. Springer is an Assistant Professor of Government and Legal Studies at Bowdoin College.

tempts to establish an analytical framework to deal with these multinational problems and to protect the global environment.

Springer utilizes a wide variety of sources, including agreements, treaties, articles and minutes of international organizations. He synthesizes this material to support his thesis that traditional international legal procedures offer a viable method for protecting the environment. Unfortunately, many of the sources he cites have little relevance to current environmental problems.⁴ Also, despite Springer's impressive research, his analysis fails to demonstrate the viability of traditional international mechanisms and methods.

The book is divided into six parts. The first five establish the framework for analysis, while the final and most interesting section is a brief case study of an international pollution dispute. A fundamental assumption of the book is that international concern over pollution is growing, and that "[s]hortages of such resources as food, clean water, and energy needed to satisfy the living requirements of an expanding world population have helped create a sense of the finite limits of the planet's capacity to support life" (p. 3). Additionally, Springer maintains that this international drive for pollution control is not inconsistent with the economic expansion of LDCs. The way to accommodate these varied interests is to create "an effective international legal framework in which both goals can be pursued cooperatively by states whose priorities differ" (p. 24).

Having defined his goal, Springer unfortunately fails to make much progress in constructing a framework. First, he never really convinces the reader that environmental protection is an essential priority of international actors, or that such protection can be achieved without sacrificing economic growth. Although Springer synthesizes material in a new and potentially exciting way,⁵ he never adequately analyzes the plethora of facts he collects. The book is thus an excellent research tool for anyone interested in the area, but not a great breakthrough in discussing a difficult and complex problem.

After establishing his thesis, Springer spends the middle three chapters of the book defining his terms. Springer begins by testing traditional models of international law for their validity in evaluating environmental problems. Later, he attempts to define pollution and determine what standards are necessary to deal with it. The defini-

4. Springer relies heavily on one collection of documents: *THE PROTECTION OF THE HUMAN ENVIRONMENT: TREATIES AND RELATED DOCUMENTS* (B. Rüster & B. Simma eds. 1975-1979). From this collection he cites treaties on the use of radioluminous watches, p. 100, an 1892 agreement concerning navigation on Lake Constance, p. 100, and a 1930's boundary waters agreement between Latvia and Lithuania. P. 107.

5. Previous works on international pollution have tended either to focus on just one area, *see, e.g.,* Taubenfeld, *International Environmental Law: Air and Outer Space*, 13 *NAT. RESOURCES J.* 315 (1973), or to consist only of a collection of unrelated studies, *see, e.g.,* J. BARROS & D. JOHNSTON, *THE INTERNATIONAL LAW OF POLLUTION* (1974). Springer is attempting to establish a framework that will be valid for any pollutant in any medium.

tional obstacle is a major one, made even more difficult on the international level by different languages and values. Nations have attempted to resolve these problems through such mechanisms as bilateral treaties and international conferences. Springer concludes that societies must move from these general principles toward strict policy guidelines that incorporate both social and economic goals. Although his conclusion makes sense, Springer fails to explain adequately how to formulate and enforce these new policy guidelines.

Springer attempts to confront some of these problems by arguing that states are assuming more responsibility toward their neighbors in such areas as the planning and development of new projects which could create international pollution. He maintains that states are becoming more likely to consult other nations before beginning a new project, although he admits that there appears to be no duty to clear such projects in advance with other states. The book supports nations' use of mediation and negotiation to avoid such problems. Arbitration and adjudication are preferable, however, since these processes contribute to the development of international standards, giving more weight and meaning to "the general principles of good neighborliness and equitable utilization" (p. 169).

In his last section, however, Springer exposes the weaknesses of his position and of depending on "the general principles of good neighborliness." He presents a case study of an international environmental dispute, a simple one involving only two nations. An oil refinery is proposed for Eastport, Maine, a port near the Canadian border. Canada opposes the project, and maintains that the supertankers must traverse Canadian territorial waters to get to the refinery. The Canadians view the refining process as posing a serious threat to their rich fishing banks, while yielding no benefits to them. Americans, on the other hand, see the proposed refinery as an important source of energy for the northeast and an important source of jobs and revenue for the depressed local economy. So far, the case has produced ten years of regulatory proceedings in the United States, all of which may prove fruitless if the Canadian opposition cannot be overcome.

Springer views Eastport as a situation where states should be willing to submit their differences to a disinterested third party for resolution. He also sees this situation as a strong argument for clear definitions of pollution and minimum standards. These could best be supplied through the efficient functioning of traditional legal processes, such as an international court. By issuing opinions and directives, the international legal system would build up a body of precedent useful in these situations. "Effective protection of the environment requires more than a willingness to cooperate; it requires the recognition that controlling pollution is a state's legal obligation" (p. 196).

From another perspective, however, the Eastport case highlights some of the essential weaknesses inherent in the concept of international law as a pollution control device. Eastport is a classic situation in which all the benefits are internal to the state which desires the action, and all the costs are external to it. This situation will appear attractive to any rational actor.⁶ It will appear even more attractive to LDCs, for whom development is a necessity. In fact, LDCs may be willing to bear higher internal effects than would be acceptable in more developed nations.⁷ Eastport thus should have been an easier case, given the rough economic parity of the actors, than many other situations likely to arise. Also, the focus of the dispute was a relatively limited area of territorial water. If a resource like the entire open sea were at stake, and if many nations were involved, the difficulties faced at Eastport would be multiplied.⁸

The United States and Canada are similar countries, both economically and culturally, and both have a relatively high standard of living. Yet they have been unable to resolve this limited conflict by working together, despite being generally "good neighbors." It is thus difficult to see how any international adjudicative body, with no enforcement powers, could resolve the multifaceted disputes among extremely different countries, involving pollutants whose effects may only be surmised. The maldistribution of wealth between nations is a real obstacle in the path of any international environmental order, but Springer fails to include this or other external factors in his analysis. Although many applaud the idea of setting more precise standards, LDCs are unlikely to accept these standards if they appear to serve the interests of the developed world. On the other hand, standards suggested by LDCs might permit more pollution than developed nations will accept. Nations have also been reluctant to submit to any type of international courts, and since international adjudication is necessary for Springer's design to function, this presents another difficulty. Springer fails even to acknowledge the existence of these problems. Although his book is well-researched, his theories fail to consider many practical limitations on the effectiveness of international law.

6. See, e.g., Hardin, *The Tragedy of the Commons*, 162 *SCIENCE* 1243 (1968) (discussing why common goods will be overexploited and underproduced).

7. Multinational corporations often see these lower standards as an incentive to locate their operations in LDCs, since this will maximize profit. See D. KAY & E. SKOLNIKOFF, *WORLD ECO-CRISIS* 275-79 (1972); K. WATT, L. MOLLOY, C. VARSHNEY, D. WEEKS & S. WIROSARDJONO, *THE UNSTEADY STATE* 170-72, 232 (1977).

8. The Law of the Sea treaty was an attempt to cover the whole spectrum of environmental protection of the oceans, and it went through decades of different drafts and proposals. Further, the more industrialized nations often blocked progress, since they were eager to protect potential deep-sea mining, for which LDCs had inadequate technology. See generally *THE LAW OF THE SEA: U.S. INTERESTS AND ALTERNATIVES* (R. Amacher & R. Sweeney eds. 1976).