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Springer. A. L. Cases of Conflict: Transboundary Disputes and the Development of International Law. Toronto: University of Toronto Press. 2016.

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Transboundary environmental disputes are cresting on the raging tide of worldwide environmental decline, degradation, and depletion. The incidence of such disputes is certain to increase, as the future appears to pose intractable challenges that exceed the institutional capacity of world governments to resolve. These challenges are grounded in legal and regulatory arenas, ranging from the arbitration of disputes and the development of legal norms or hard law—to bring to bear on such disputes as they arise—to the formation of adjudicative bodies to resolve them. Sadly, there are few legal and regulatory regimes in place to tackle these flinty issues that cry out for settlement. More importantly, such issues will likely test the mettle of individual states to grapple with them in peace and security. Allen Springer is nevertheless sanguine about environmental disputes, which, he argues, lend themselves to the framing of international law in order to bring them to amicable resolution.

In his timely and well-crafted book, *Cases of Conflict: Transboundary Disputes and the Development of International Law*, Springer draws on the intersection of legal scholarship, political science literature, and International Relations Theory to ground and further the argument that he first made in 1990 at a meeting in Vienna convened to deliberate on the development of customary international environmental law, namely that "states have a legal obligation to prevent activities on their territory or under their effective control from causing environmental damage to neighboring states" and that "should serious transboundary damage be done, compensation is required" (p. xi). He was pragmatic enough to hedge his optimism that states would comply with such a requirement by conceding that "squaring this alleged rule with the reality of state behavior [is] not easy" (p. xi).

The six cases that he has meticulously documented duly manifest the difficulties in rallying international efforts to design legally binding instruments for fixing responsibility on errant states for their environmentally damaging behavior. Springer also successfully demonstrates that environmental disputes have been instrumental in steering world nations to legislate environmental safety and develop liability rules to compensate for environmentally damaging behavior. His central thesis—that environmental conflicts contribute to developing international environmental regimes for liability and compensation rules—becomes a testable hypothesis through his exploration of the six carefully selected and diligently researched cases. These cases represent a critical examination of the relationship between the rules and processes of international environmental law and international behavior. In particular, the cases look at the ways in which states and other international actors come to answer environmental disputes. The cases also explore how "legal norms are employed in the course of international environmental disputes and how, in the process, those norms are developed" (p. 2). In short, they focus on "the broader implications of the disputes themselves for the development of international environmental law" (p. 14).

Cases of Conflict poses two central questions: First, how is international law employed in the context of transboundary environmental disputes? Second, what is the broader impact of these disputes on the law itself? Thematically, the text is divided into two sections of three cases each. The first section, Norms, presents the first three cases, which examine "key normative questions, the basic rules that are said to govern state behavior: state environmental responsibility, liability for environmental damage, and the assessment of environmental risk" (p. 16). The second section, Issues, presents three cases that address issues of process: how

international law can be shaped through unilateral action, the process by which new rules evolve in a decentralized environmental framework, and the enhanced role of international courts in transboundary environmental disputes" (p. 16).

The first case addresses the Indonesian haze, the transboundary impact of which cuts across the East Asian region. Since the late 1990s, when Indonesia undertook massive land-clearing for palm oil plantations, Indonesian haze has been a health hazard and a source of economic losses to its neighbors in the region. Its immediate neighbors, Malaysia and Singapore, have been most directly affected. Yet neither neighboring nation made legal claims on Indonesia to control its land-clearing fires or to request compensation for choking their populations on the smoke. Springer argues that a view of state environmental responsibility emerged from this dispute that reflected the historic 1941 Trail Smelter arbitration,[1] still the most cited court ruling in international environmental law, and further reinforced the liability of negligent states to prevent environmental damage. The second case relates to a Romanian gold mine that emitted cyanide, causing massive environmental public health hazard in neighboring Hungary. In 2000, the Baia Mare Cyanide Spill forced Hungarian municipal governments to take high-cost remedial measures to combat the spill, though Hungary ultimately went uncompensated by Romania. Like Malaysia and Singapore, Hungary did not sue the errant Romanian mining company or bring environmental damages claims against Romania for the cyanide spill. In Springer's telling, the dispute was emblematic of the "limitations of liability" as a mechanism for claiming compensation for environmental damage. The cyanide spill nevertheless contributed to strengthening liability rules in Europe. Responsibility for the spill—which according to Springer, should have been pinned on Australia, where the company's primary investor was based—was never ultimately determined.

The third case presented in the text is that of a dispute over the location of a nuclear reprocessing plant in the United Kingdom, to which neighboring Ireland objected due to the potential risk of radiation and the shipping of nuclear materials across the Ireland Sea. The United Kingdom set aside Irish concerns and went ahead with authorizing the siting of the Mox Nuclear Reprocessing Plant in 2001 in Sellafield, which sits close to the shores of the Irish Sea. This dispute, although also transboundary in nature, differs from the first two—which had to do with actual air pollution—in that it was about potential risk or hazard. Despite the risks, Springer emphasizes, the United Kingdom initially never questioned the imperative of consulting Ireland on the project or complying with environmental impact assessment procedures in order to conform to international standards. However, he asserts, the United Kingdom subsequently took concrete steps during and after the dispute to acknowledge the significance of both consulting neighboring nations and conducting impact assessment procedures when undertaking potentially environmentally risky endeavors. The fourth case tangled Canada and Spain over fishing rights on the Grand Banks in the Atlantic Ocean, highlighting yet another kind of issue that has to do with maritime resource appropriation. In 1995, Canada seized the Spanish fishing trawler *Estai*, which, according to Springer's description, "appeared" to be just outside Canada's Exclusive Economic Zone (EEZ) in the international waters on the Grand Banks. Springer argues that the dispute, which occurred just before an already fixed United Nations meeting set to discuss straddling stocks of fish, afforded the UN the opportunity to discuss international efforts to amend international environmental law through unilateral action. To Springer, this dispute thus contributed to revisiting the ways in which the straddling stocks of fish were regulated both in the Northeast Atlantic and worldwide.

The fifth case, addressing the voyage of an aging aircraft carrier, the Clemenceau, has to do with transshipment of hazardous waste, which brought into dispute the nations of France and India. France attempted to dump the aging Clemenceau at the ship-breaking yards in Alang, India. The attempt prompted outrage, and protests erupted worldwide against retiring a ship that still had hazardous materials on board in an Indian ship-breaking yards, where working and environmental conditions were lax. France responded to protests by repatriating the vessel and having it broken down in the United Kingdom. This decision coincided with a debate within the international community regarding how to safely retire aging ships. World nations and non-governmental organizations had been divided on how to govern shipbreaking. Those opposed to shipbreaking argued for decommissioning of the Clemenceau according to the terms of the 1992 Basel Convention,[2] which explicitly forbids transshipment of toxic material, while those with a more lenient view of the industry made a case for a new convention within the general framework of the International Maritime Organization (IMO) that would permit transshipment in certain cases or under certain conditions. The issue is still far from resolution, and Singer's presentation of this case underscores how the complexity of environmental disputes defies established international regimes.

The sixth and the last case involves a bilateral dispute between Uruguay and Argentina over the siting of the Uruguayan Pulp Mills on the River Uruguay across from Argentina. In 2003, Uruguay decided to build a large cellulose plant at Fray Bentos on the River Uruguay, for which a Finnish company was hired. Argentina, like Ireland over the Mox Nuclear Reprocessing Plant, took issue with the project for its potential impact in waste and the lack of thoroughness of the assessment procedures that were adopted to greenlight the project. Jumping into the fray were both a regional free-trade organization and the International Court of Justice, which according to Springer, made "modest but valuable" contribution to resolving the dispute. This particular dispute thus highlights the role of adjudicative bodies that may not be to the liking of contending parties.

In his analysis of the six cases, Springer did an unparalleled job of demonstrating how transboundary conflicts provide the grounds for developing international law, and thus contribute to a rules-based international order. His work also illustrates that getting sovereign states to comply with such rules remains a challenge. In one of Springer's documented cases, Canada, apparently in love with Turbot fish, overstepped the bounds of the Law of the Sea to seize the Spanish Trawler *Estai* in international waters. Similarly, the Basel Convention is a multilateral agreement that prohibits even bilateral agreements on transshipment of hazardous waste (Niazi, 2008), yet, as Springer documents, France went ahead and retired its aircraft carrier Clemenceau with hazardous material still on board the ship, in India, until international outrage and mass protests forced it to rescind the decision. (Notably, in an environmental dispute not examined in Springer's book, Japan currently tiptoes around the Basel Convention to dump its hazardous waste in the Philippines under the pretext of a bilateral agreement) (Niazi, 2008).

The contradiction between determining environmental responsibility and countries actually accepting their own environmental responsibility leads to the question of power involved in framing and enforcing international environmental law. In this context, Indonesia's smaller neighbors, Malaysia and Singapore, cannot take on a giant regional power for its frequent and prolonged outbreaks of fires and air-borne haze, both of which pose severe health hazards to the citizens of the smaller nations. Still, Indonesia alone cannot be held responsible for emissions from land-clearing, as the real beneficiary of its palm oil plantations is the international capitalist class. This raises the related question regarding the dispersal of

responsibility for environmental risks and hazards, as Springer himself documented in the case of Romania's Baia Mare Cyanide Spill, in which the primary investor in the Romanian mine was located in Australia. These challenges do not detract from the significance of Allen Springer's *Cases of Conflict*, which makes an outstanding contribution to the accumulating scholarship on international environmental law and politics in general, and transboundary environmental conflicts in particular.

References

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[1] The Trail Smelter dispute involved the governments of the United States and Canada; smoke produced by the Consolidated Mining and Smelting Co.-operated smelter in Trail, British Columbia caused damage to forests and crops across the US-Canadian border. The dispute between smelter operators and affected land owners was eventually sent to an arbitrational tribunal and was ultimately settled via litigation in 1941.

[2] An international treaty intended to limit the movement of hazardous waste between nations, particularly the transfer of hazardous waste from developed to less developed countries, the Basel Convention was implemented not only to ensure the environmentally sound management of hazardous waste produced by developed nations (ideally as closely as possible to the source of generation) but also to assist less developed countries in the environmentally sound management of the waste they produce.