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BOOK REVIEW

The New Nationalism and the Use of Common Spaces: Issues in Marine Pollution and the Exploitation of Antarctica. Edited by Jonathan I. Charney. Totowa, New Jersey: Allanheld Osmun & Co., 1982. Pp. 343, Index.

As attention focuses upon the Antarctic continent and other common international spaces as possible targets for development, decision-makers must be sensitive to the myriad, complex problems involved with such development. The development of Antarctica, the subject of this study, must be attempted only after careful thought and must progress incrementally. Two tensions, however, operate to distract us from studied development. They are resource scarcity and growing nationalism.

The first of these, perceived resource scarcity worldwide, tends to add urgency to the calls for rapid development. Little doubt persists that possible resource scarcities in coming years could portend severe economic dislocations throughout the international business community. Similarly, the potential for such a profound economic transition has engendered serious rethinking by industrialists and government officials alike about the prospective opportunities in exploring for and exploiting living and non-living natural resources in global areas hitherto undeveloped. Significantly, chief among these common space regions now being touted as potentially lucrative for multinational commercial use are the earth's oceans and the Antarctic continent.

Concurrently, the second tension, nationalism, operates to disrupt coordinated efforts among countries. There is an abiding realization that pervasive nationalism is on the ascendency. Should this indeed be the case—i.e., that nationalism, with its characteristic ingredients of exacerbated political aggrandizement and socio-economic self-interest, is waxing worldwide—then several critical queries beg to be addressed.

Given the twin trends of inevitable resource depletion and growing neo-nationalism, what negative implications are suggested vis-a-vis management and preservation of the global environment? Should conversation-oriented and pollution-control policies for common space resource exploitation be allocated political priority? More to the point, are the international regimes now in place for overseeing use of the

oceans and possible commercial development of Antarctica sufficiently adequate both politically and legally to regulate and safeguard the indigenous ecosystems from over-exploitation and environmental degradation? If not, what policy-oriented legal measures can or ought to be effectuated so that sound eco-management might be facilitated? In sum, how should public and private international law be best designed in order to permit reasonably productive resource exploitation of the oceans over the near term and of Antarctica over the long term, while simultaneously ensuring those regions' environmental quality and protecting their ecological balance?

The New Nationalism and the Use of Common Spaces, edited by Jonathan I. Charney and published under the auspices of the American Society of International Law,¹ boldly attempts to examine these protracted questions and concomitantly to provide objective answers for them. In substantial measure, the composite effort emerges as a notable success and very salient contribution to the international law literature.

The nine essays comprising this anthology are organized into two broad thematic sections. Part one consists of four essays which deal with various aspects of marine pollution. Part two contains five selections which analyze and evaluate the economic, potential, political niceties, and legal nuances associated with the circumpolar Antarctic environs.

In the area of the marine environment's degradation, Jan Schneider provides a cogent review of vessel-source pollution, particularly that associated with tanker accidents, unregulated ocean dumping, and shippers' ballast discharges.² Her treatment thoughtfully assesses trends in vessel anti-pollution law, underscores various regional and multilateral efforts aimed at alleviating it,³ and reflects on the pros-

¹ THE NEW NATIONALISM AND THE USE OF COMMON SPACES: ISSUES IN MARINE POLLUTION AND THE EXPLOITATION OF ANTARCTICA (J. Charney ed. 1982) [hereinafter referred to as CHARNEY].

² Schneider, *Prevention of Pollution from Vessels or Don't Give up the Ship*, in CHARNEY, *supra* note 1, at 7.

³ For example, Ms. Schneider evaluates the International Convention for the Prevention of Pollution of the Seas by Oil 1954, *opened for signature* May 12, 1954, 12 U.S.T. 2989, T.I.A.S. No. 4900, 327 U.N.T.S. 3, in CHARNEY, *supra* note 1, at 9; the International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties, *opened for signature* Nov. 29, 1969, 26 U.S.T. 765, T.I.A.S. No. 8068, in CHARNEY, *supra* note 1, at 10; the Agreement Concerning Pollution of the North Sea by Oil, *done* June 9, 1969, 704 U.N.T.S. 3, in CHARNEY, *supra* note 1, at 12; and the Convention on the Protection of the Marine Environment of the Baltic Sea Area, *done* Mar. 22, 1974, 13 I.L.M. 544, in CHARNEY, *supra* note 1, at 12.

pects—which admittedly appear dim⁴—for fully safeguarding the oceans in the wake of ever-increasing maritime transit.

The preeminent causes of land-based marine pollution,⁵ as well as representative national pollution control programs,⁶ are coherently explained in an essay by William Whipple, Jr.⁷ Judith Kildow carries the analysis further as she scrutinizes specific political and economic ramifications resulting from land-based pollution.⁸ Professor Kildow's sobering conclusion outlines the uncertainties that require further study before effective solutions can be fashioned. She posits:

This chapter has noted some of the difficulties inherent in controlling the outflow of marine pollutants from land-based sources: (1) the lack of data and precedents, which make it difficult to assess the pollution damage and the costs of cleanup; (2) the nonpoint source conditions, which make it difficult to identify the responsible party; and (3) the differing and rapidly changing conditions among nations, which make it difficult to establish accountability and to assign responsibility for taking the necessary initiatives. All of these factors exacerbate the dilemma facing the decisionmakers: they must resolve a large number of uncertainties before the problem of land-based sources in marine pollution can be addressed.⁹

In the first section's final selection, Robert J. McManus supplies a brief, albeit certainly much appreciated, legal discussion about the regulatory instruments available for stemming transnational marine pollution, especially at the regional level.¹⁰ Fully cognizant of the "stupefying scope of the problem,"¹¹ Mr. McManus is prompted to observe frankly that, "[i]n fact, any proposed solution to the problem of land-based sources cannot be theoretically sound unless it provides for an allocative mechanism. Such a mechanism will depend in turn on the willingness of nations to surrender at least some small portion of

⁴ In the words of Ms. Schneider, "A workable balance [between environmentalists and shippers] has not yet been achieved, primarily because the great forces of power and vested interest all tend one way [i.e., presumably towards the shippers]." Schneider, *supra* note 2, at 22.

⁵ Generally, sources of man-made marine pollution stem from municipal sewage, industrial wastewaters, stormwater runoffs, and multifarious leaks and seepages. Petroleum, heavy metals, and chlorinated hydrocarbons apparently pose the greatest threats to the oceanic environment. See generally OCEAN AFFAIRS BOARD, COMM'N ON NAT'L RESOURCES, U.S. NAT'L RESEARCH COUNCIL, STUDY PANEL ON ASSESSING POTENTIAL OCEAN POLLUTANTS (1975).

⁶ Programs in the United States, the Federal Republic of Germany, Great Britain, France, and Japan are discussed in CHARNEY, *supra* note 1, at 50-56.

⁷ Whipple, *Land-Based Sources of Marine Pollution and National Controls*, in CHARNEY, *supra* note 1, at 28.

⁸ Kildow, *Political and Economic Dimensions of Land-Based Sources of Marine Pollution*, in CHARNEY, *supra* note 1, at 68.

⁹ *Id.* at 86.

¹⁰ McManus, *Legal Aspects of Land-Based Sources of Marine Pollution*, in CHARNEY, *supra* note 1, at 90.

¹¹ *Id.* at 91.

their sovereignty.”¹² Perhaps, true enough, but therein also lies the rub. For, if this newly articulated nationalism is indeed ubiquitous, one hardly can anticipate a headlong rush by national governments to band together and generate a multilateral consciousness-raising effort aimed at preserving the earth’s marine environment. Contrariwise, the reverse inclination seems more likely to occur.

The second and more extensive part of *The New Nationalism and the Use of Common Spaces* pertains to questions of Antarctic exploitation. Accordingly, the two initial studies provide realistic assessments of the region’s resource potential; the latter three contributions investigate the legal status of the continent and the attendant difficulties implicit in creating viable legal regimes for exploiting both living and non-living resources in the circumpolar region.

Professor James Zumberge’s broad analytical insights into the availability of minerals in Antarctica and possible environmental problems from exploitation there are noteworthy and impressive.¹³ Not surprisingly, given the rather shallow available data base, Professor Zumberge pointedly accepts the premise that “[w]hile a *potential* mineral resource may exist on the Antarctic continent, no mineral deposits of economic value in the present marketplace are known. The likelihood of a change in economic circumstances to justify exploitation of possible discoveries is considered remote for the near and mid-term future.”¹⁴ At present, this reviewer must concur in that appraisal.¹⁵ Further, as Professor Zumberge contends, there also persists the pressing need for exercising cautionary restraint before undertaking substantial hydrocarbon extraction from Antarctica’s continental shelf.¹⁶ Most assuredly, far greater research is warranted about the environmental risks implicit in Antarctic exploratory and production ventures. In such a fragile ecosystem, to err drilling-wise may be human, but to forgive may be too little, too late—and at too great an ecological cost.¹⁷

Turning to the specific economics of Antarctic resource exploitation, Giulio Pontecorvo evaluates the relevant conditions of supply and demand which presumably affect commercial development of the re-

¹² *Id.* at 107.

¹³ Zumberge, *Potential Mineral Resource Availability and Possible Environment Problems in Antarctica*, in CHARNEY, *supra* note 1, at 115.

¹⁴ *Id.* at 116.

¹⁵ *Cf.* Joyner, *The Exclusive Economic Zone and Antarctica*, 21 VA. J. INT’L L. 691, 703 (1981) (the United States Geological Survey estimates that the western Antarctic continental shelf contains large quantities of petroleum and natural gas, although the profitability of commercial recovery is unknown).

¹⁶ Zumberge, *supra* note 13, at 133-46.

¹⁷ *Id.* at 142-43.

gion.¹⁸ Given the “politics of uncertainty” surrounding Antarctica—a condition aggravated by the scant data available—his conclusion is not unreasonable:

In all cases of nonliving resources, with the possible exception of petroleum in some future period, there are alternative sources of supply in more accessible, less hostile locations Unless one is willing to deny the role of price and substitution in the markets for minerals and to assume further that the demand for and real price of minerals will behave differently than they have for the past century, there are no economic grounds for expecting development of nonliving resources on the Antarctic continent.¹⁹

At least for the foreseeable future, Mr. Pontecorvo's observations appear politically justified and economically well-grounded.

Professor Richard B. Bilder's analysis of the legal situation earmarking Antarctic politics²⁰ is at once pensive, persuasive, and perspicacious. The historical evolution of the present Antarctic Treaty regime, the theoretical and *realpolitik* arguments espoused over resource ownership and jurisdiction in the region, and the increasing relevance of international environmental law to Antarctica are all treated comprehensively in clear and thoughtful detail.

That environmental considerations must remain integral to any future strategies aimed at producing an Antarctic mineral resource regime is the preeminent theme of the editor's own contribution.²¹ In this connection, Professor Charney would opt for a regime which reconciles national interests with economic resource needs, but at the same time allows for “systematic protection of the environment.”²² Further, of the various approaches deemed plausible for fashioning a minerals regime in Antarctica, namely unilateral national initiatives, universal negotiations, or limited multilateral action,²³ Professor Charney prefers the limited multilateral approach. In his view:

Unless there is a substantial change in the international political picture, the maximum opportunity for creative development of international law and institutions will be found within the context of negotiations between

¹⁸ Pontecorvo, *The Economics of the Resources of Antarctica*, in CHARNEY, *supra* note 1, at 155.

¹⁹ *Id.* at 162. *Cf. supra* text accompanying note 14.

²⁰ Bilder, *The Present Legal and Political Situation in Antarctica*, in CHARNEY, *supra* note 1, at 167.

²¹ Charney, *Future Strategies for an Antarctic Mineral Resources Regime—Can the Environment Be Protected?*, in CHARNEY, *supra* note 1, at 206.

²² *Id.*

²³ Compare Charney's views with the scenarios of possible political jurisdiction in Joyner, *Antarctica and the Law of the Sea: Rethinking and Current Legal Dilemmas*, 18 SAN DIEGO L. REV. 415, 435 (1981).

limited numbers of nations which have identified, specific, and direct interest in the item under negotiation. Only after a solid political-legal foundation were laid would broader participation be appropriate. A less elitist approach must await a better international political climate and more capable international institutions. The same conclusion must be reached in the case of suggestions that the mineral regime and living resource regime should be merged. Incremental efforts which may ultimately lead to a merged unitary regime are required if any progress is to be made.²⁴

Last, though assuredly not least in consequence, James M. Barnes furnishes a stimulating essay²⁵ concerning the recently activated Convention on the Conservation of Antarctic Living Resources.²⁶ Particularly valuable is his detailed treatment of the history of the Consultative Party negotiating sessions during 1977-81²⁷ and the incisive appraisal of the Convention's principal provisions.²⁸ Given the blemished fruits detected in this treaty-making experience, Mr. Barnes is neither sanguine nor optimistic about future Antarctic developments. As he opines:

Until the claims of individual states are eliminated, the establishment of a sound management scheme appears to be impossible. In the course of a transition to international control some time in the future, claimants should voluntarily drop their claims and act in concert with the remaining Treaty Parties and other representative countries to serve as trustees of Antarctica for the international community. In the absence of such a step, it is unlikely that anything other than the sort of limited-purpose Convention already achieved can be hoped for in dealing with Antarctic resource questions. Unfortunately, no one has yet devised a viable strategy for obtaining the necessary actions by the Antarctic Consultative Parties, claimants and nonclaimants alike.²⁹

Considering the sensitive, volatile nature of global eco-politics, especially when national sovereignty is mixed with natural resource wants, these observations may very well prove to be prescient.

In the main, each chapter comprising this compendium comes amply documented with authoritative citations. Moreover, cross-referencing of the contents has been provided in order to assist the reader in

²⁴ Charney, *supra* note 21, at 231.

²⁵ Barnes, *The Emerging Convention on the Conservation of Antarctic Marine Living Resources: An Attempt to Meet the New Realities of Resource Exploitation in the Southern Ocean*, in CHARNEY, *supra* note 1, at 239.

²⁶ Done May 20, 1980, reprinted in CHARNEY, *supra* note 1, at 312. As of September 1, 1982, the following States had ratified the Convention: Argentina, Chile, German Democratic Republic, Federal Republic of Germany, Japan, New Zealand, South Africa, the United Kingdom, the United States, and the Soviet Union. The Convention entered into force April 7, 1982.

²⁷ Barnes, *supra* note 25, at 247-60.

²⁸ *Id.* at 260-69.

²⁹ *Id.* at 274.

more effectively identifying and co-relating relevant points and passages. Not to be overlooked also is the inclusion of nearly fifty pages of documentary appendices as well as attachment of a detailed index.

Like many edited volumes, the relative quality of the contributions varies somewhat. Yet, each selection appears to be authored with a balance and insight that only comes from intimate knowledge of and expertise in the subject matter. In this regard, the text is uniformly lucid and tightly edited.

To conclude, Professor Charney's edition presents a wealth of information about oceanic pollution and Antarctica. Perhaps of even greater import, it provocatively engages in well-reasoned and challenging speculation about the environmental salubrity of those common space regions. Hence, this book will be of considerable interest to serious scholars working in the field of public international law, although private legal practitioners would gain much from the discussions concerning anti-pollution law and the commercial prospects for Antarctica's resource development.

Irrespective of the intended audience, one overriding realization appears certain: preserving the physical well-being of both the world's oceans and Antarctica ultimately is critical to ensuring humankind's survival. Moreover, as made abundantly clear throughout *The New Nationalism and the Use of Common Space*, multinational cooperation via legal conduits is essential to reaching that end. Alarming, to proceed otherwise could invite avaricious political anarchy, or worse, regional eco-catastrophe. In either case, the product of unbridled nationalism in exploiting global resources would be inexorably lamentable.

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