

Review of European Community & International Environmental Law

International Nuclear Law

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Philippe Sands

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environmental liability between state and investor. It is divided into two parts: Part 1 makes ample use of the presentations and conclusions of the Warsaw Conference but provides embellishment of those matters by the addition of further details. It sets out suggestions and proposals for dealing with some of the difficult problems arising both within individual transactions and at a strategy level. Part 2 contains specific information on the privatization laws and environmental regulatory structures of various CEE countries, particularly Poland, Hungary and the Czech and Slovak Republics.

The main value of the book lies in its airing of the environmental issues and their ramifications in the privatization plans of CEE countries. The realities of encouraging foreign investment to take over the operation of industrial processes on sites contaminated by past activities along with the continuing polluting effects of such industrial operations are explored in some detail. The book reviews the problems of defining concepts such as environmental impairment and contamination and the vague language of domestic environmental legislation in different CEE countries. Difficulties of evaluating risk of environmental liability arising for past or continuing activities and the lack of parameters in attempting any valuation of assets, including contaminated sites, are considered.

A key debate relates to the possible use of warranties and/or indemnities in contracts of sale of previously state-owned businesses. The book suggests that indemnities given by governments for restricted periods following sale may well be the most pragmatic way forward. The use of warranties heavily circumscribed by disclosure is unlikely to encourage a foreign investor whereas, with an indemnity, that investor will at least have the comfort of knowing that if he has to pay out for some inherited environmental liability, the government concerned will be reimbursing him.

For most UK environmental lawyers and for the wider economic community, the environmental problems associated with privatization in CEE countries may be something of a mystery at the present time. This fascinating book, particularly in Part 1, takes the lid off many of these issues and examines them in an easily assimilated fashion. Part 2 of the book is also interesting in that it directs attention at legal approaches to these problems in specified CEE countries. It is not clear from the text at which date the law considered in Part 2 would be accurate and, to some extent, this reflects an inevitable difficulty with the book in that it represents a snapshot of the position in CEE countries at a particular moment. It seems very probable that 2-4 years on, the issues considered may well

have been overtaken by events in a rapidly changing theatre of Europe.

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A Conspiracy of Optimism: Management of the National Forests Since World War Two. Paul W. Hirt, published by University of Nebraska Press, 1995; 416pp; \$38, hardcover.

The United States Department of Agriculture Forest Service (USDA FS) controls one of the largest systems of public lands on earth and has been the subject of some of the most extensive and fluctuating bodies of federal legislation. The agency controls 191 million acres of forest and range lands: one-tenth of the surface of the USA and a huge portion of the major sources of freshwater particularly in the West. Over a third of the species, either listed or candidate as threatened and endangered in the USA, are dependent on habitats in those lands. *A Conspiracy of Optimism* is cautionary on state-sponsored resource development and conservation where longer-term concerns for non-market values are consistently neglected. University of Kansas doctoral student Paul Hirt carefully charts how this huge agency became a machine out of control as the US economy expanded and the Cold War constrained public review and criticism.

The USDA FS has been a major generator of institutional ideology and culture for resource use and conservation for North America and for federal systems of public lands throughout the world. Many key conservation concepts have been shaped in part through efforts, often in vain, to make the behemoth of the USDA more balanced in its decision-making. For example, North American notion of wilderness, as in the 1964 United States Wilderness Act, developed in direct response to the Cold War explosion in road building and timber cutting. And the historical vagueness of US environmentalism, in objectives for social development, derive, in no small part, from the chronic difficulties of countering the industry-agency rhetoric of job creation through liquidation of ancient forests. Hirt documented 'a well-entrenched conspiracy of optimism enconced at the very ideological core of the [US] natural resources management establishment' (p. 4).

The author's writing style is well-measured though occasionally the overwhelming implications of the chronicle spill out with assessments such as an 'almost Stalinesque bureaucracy' (xvi). The author goes on to confirm the notion of the USDA FS as a cen-

tury-old ecological timebomb. Unfortunately, his chronicle emphasizes the post WW II period and ignores some of the more blatant colonial and expansionist roots of the agency associated with its establishment a century ago. This is the weakest aspect of the book's analytical framework. Ironically, it was the strong hostility to federal intervention, from the inception of the USDA FS, that foreshadowed the seeds of destructive land use practices and ineffective management for a diversity of social needs. The book is problematic in that it ends in 1992 at a time of great change which continues today. Already, Hirt's discussion is somewhat dated.

The beginning of a formal system of public lands was in 1891 and in large part was due to a century of emphasis on private property as the basis for social development. The 'contradictory mandates' at the inception of the USDA FS laid the basis for technocratic administration. Gifford Pinchot was appointed as the agency's first head in 1897 and he subsequently articulated a new 'progressive conservation ideology' (pp. 31-34). The convenient vagueness of the credo of 'the greatest good for the greatest number' (p. 36) created a conceptual labyrinth for independent evaluation of social and economic impacts. Much of the agency's current administrative factors formed through the Cold War with its emphasis on expanded military and domestic consumption. A reversal of political alliances occurred after WW II where the private interests hostile to the existence of USDA FS came to control it. The pressures to satisfy its corporate masters had a direct bearing on the evolution of notions of 'annual allowable cut' along with a system of public subsidies for otherwise uneconomical corporate operations. 'Pursuing intensive management allowed the Forest Service to avoid tough choices and to dodge responsibility for the accumulating deterioration of forest ecosystems' (xii). Hirt uncovers some curiously strong links with Prussian forestry up until World War II. Ironically, monocultural forestry was largely abandoned in Germany by the end of WW II as it was becoming entrenched in the USA. Between the end of WW II and the Korean War, corporate interests came to fully dominate the decisions of the agency. Federal forest managers were forced to cement alliances with corporate antagonists in the anti-New Deal conservative backlash that culminated in a Republican President and Congress in the McCarthy period. A system serving logging corporations, mills, banks, and unions, while barely placating growing public needs for 'wildlands' came to be synonymous with such euphemisms as 'multiple use', 'sustained yield', and 'annual allowable cut'. 'Silviculture' came to be called 'management' with non-timber and non-market values increasingly ignored.

Resistance to the reduction of social demand to commodities, and the liquidation that it rationalized, was also established soon after WW II (pp. 62-63). The large-scaled 'clearcutting', previously referred to as 'even-aged management' (p. 264) that became the dominant mode of tree harvesting in this period was as much the product of intensifying ideological conflicts and the perceived need to take as much timber as swiftly as possible while these corporate interests remained in command. The construction of the spectre of the leftist 'environmentalist', birkenstocks and all, was, in no small part, associated with a corporate strategy, in the anticommunist hysteria, to isolate resistance to rapid increases in cutting levels (pp. 72-73). And it was in this period that the pattern of government subsidized liquidation of ancient forests, dangerous levels of grazing, and reduction of 'recreational' and other landscape values to short-term market indicators, were all engrained. Legislation defining 'multiple use' was first enacted in 1955 but there was never any consensus for increased levels of conservation. This contradiction paved the way for an oppositional break and an independent environmental movement in the following decade. At the inception of this debate, corporate interests were able to dominate through their emphasis on short-term jobs created but the expanded cutting did not generate sufficient revenues to go back to the agency and reforestation was always neglected (pp. 203-207).

For me, Hirt's understated illumination of today's land management by the USDA FS as largely a creature of the Cold War was perhaps the most upsetting revelation in this well-crafted history. For example, Hirt described how the administrative structure of the offices of the Tongass National Forest of southeastern Alaska, long notorious for subsidizing the liquidation of slow-growing temperature rainforest - in recent years for Japanese corporate interests, became established with post-WW II logging and 'scientific' management. Hirt's accounts are direct and understated, his notion of 'conspiracy' is supple but the wealth of his facts could easily be interpreted with a paranoia akin to that of Grade B television series such as the *X-files*. The Democratic Congress and Presidencies of 1960-68 created a crack in the wall of the corporatization and clearcutting but the few gains in conservation were soon eroded in the Nixon years. The Carter administration was not able to reverse the trends. By the Reagan years, the agency was out of control prompting a flood of reform initiatives by a Democratic-controlled Congress in the Bush years. Hirt's chronicle is especially important in portraying the yet-to-be resolved 'internal revolt' within the agency against the emphasis on short-term cutting and overgrazing, that has emerged over the past decade. The book ends with Clinton's 'timber summit'

where he intimidated environmentalists into supporting compromises that have allowed the USDA FS to continue to facilitate over-cutting and largely cosmetic forest rehabilitation. The current rhetoric to manage and conserve entire 'ecosystems' functions to mask the opposite types of policies. Perhaps the most disturbing aspect of *A Conspiracy of Optimism* is not the inevitability of the loss of diverse, multi-aged forest ecosystems but rather how spurious science and vested interests came to be so deeply entrenched even when large portions of staff never really believed the rhetoric.

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Ecosystem Classification for Environmental Management, Frans Klijn (ed.) published by Kluwer Academic Publishers, Dordrecht, The Netherlands, 1994; 293pp; \$76, hardcover.

Science, and ecology in particular, is taking an increasingly central role in legal concepts such as 'environmentally sensitive areas' and 'critical habitat'. How areas are defined and lines are drawn can become subjects of legal actions. This landscape ecology anthology highlights growing importance of ecological classification in environmental planning. *Ecosystem Classification for Environmental Management* makes contemporary interpretations of the ecosystem concept. However, the anthology is rooted in a somewhat dated ecological determinism that in these times of deconstruction an unmasking of the biases in sciences is perhaps over-confident. The book's central argument is that 'to sustain biodiversity, we must preserve **ecodiversity**: a varied pattern of ecosystems at the earth's surface composed by the interaction of abiotic, biotic, and anthropic forces' (v). Problematically, the compilation suffers from modernist obsessions for over-generalization and emphases on predictable and homogeneous spaces that can stymie efforts to identify unique and vulnerable sites.

The essays in *Ecosystem Classification for Environmental Management* focus on north-western Europe. Wolfgang Haber links landscape ecology to environmental planning with its intrinsic policy dimensions. Michel Godron, the current patriarch of landscape ecology, explores the various natural and social factors that determine the basis for delineating different ecological zones and management areas. Frans Klijn proposes hierarchies to more clearly delineate ecosystems. Han Runhaar and Helias Udo de Haes explore more site-specific

approaches that allow for recognition of greater uniqueness and finer precision in decision-making. Robert Bunce reviews the implications of ecological survey methods to protection of sensitive areas in Britain. There is an outline of the use of the Biological Valuation Map for nature conservation in Flanders and another on identification and monitoring of sensitive sites in Denmark, called 'small biotopes', as part of its Nature Protection Act.

Ecosystem Classification for Environmental Management illustrates the problems of translating a variety of scientific interpretations into equally fluid legal concepts. While by no means comprehensive, the anthology can be used as something of a guide, at least for a few years, for north-western Europe. But many of these still vague scientific categories will soon be antiquated in large part because of public pressure for better conservation and lower impact development. In this sense, much of the book is 'good science' in that it uncovers many more questions, in this increasingly prominent aspect of environmental planning, than it answers.

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Environmental Law, Simon Ball and Stuart Bell, published by Blackstone Press Ltd., London, UK, 1995, 546pp; £21.95, softcover. **Statutes on Environmental Law, 2nd Edition**, R. Duxbury and S. Morton, published by Blackstone Press Ltd., London, UK, 1995, 463pp; £13.95, softcover.

Ball and Bell on Environmental Law examine, within stated boundaries, the UK Law relating to the Environment with an additional chapter on EC Law.

The appearance of the third edition of this student text is certainly a welcome event. The book's structure, like its predecessors, is divided into two parts. Part I covers 'General Principles of Environmental Law' including Sources, Agencies, The EC, Regulation and Enforcement, Environmental Information and The Role of the Common Law. Part II entitled 'Sectoral Coverage of Environmental Law' deals with specific areas such as Integrated Pollution Control and Waste Management. This tried and tested structure works well. It is not always obvious, however, why the section on common law should be discussed in Part I as it contains some highly specific case law. That being said, in a field as diverse and protean as environmental law it is of the utmost importance to the newcomer to establish the basic principles and struc-