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It is perhaps this weak international link of access to environmental justice that explains some of the set-backs (seen as such by environmentalists) happening even in supposedly 'green' countries such as Australia, Norway, and Switzerland. This book does not contain studies on these countries, but perhaps a future global project should do so!

- The Burrup Peninsula in northwest Australia is home to the world's largest collection of petroglyphs—stony witnesses to 8,000 years of history (and, incidentally, of the 1868 massacres perpetrated by white settlers against the last 200 Yaburrara Aborigines). In order to better exploit the natural gas reserves of the area near the Port of Dampier, a quarter of this treasure, which archaeologists compare to Stonehenge, Gizeh, and Angkor Wat, has already been destroyed. More damage that is irredeemable is to follow. It is interesting to note that public opinion in Australia appears to be much less sensitive to this historic disaster than to another encroachment by (Australian) gold mining companies on the graves of (Australian) Second World War veterans. This desecration, which in 2006 happened on the Kokoda Track in Papua New Guinea, led to a patriotic outcry. This example may not be directly relevant for access to environmental justice, but it is quite significant when one considers the priorities and the importance of public opinion regarding the value of what at least some parties considered as a *res nullius*.
- More directly relevant to access to environmental justice is the well-known Norwegian (and Japanese and Icelandic) refusal to accept whaling bans adopted in the framework of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES).[20] This is not the place to discuss the merits or demerits of the involved parties in the whaling dispute. The man-made extinction of animal species that might result from whale hunting would not be the first of its kind. It would nevertheless be a new development if this happened with national governments actually condoning such activities despite the ban adopted by the international community.
- Switzerland is another country with rather well-developed citizen rights when it comes to access to environmental justice. However, a leading political party in the coalition government is attacking the right of environmental NGOs to challenge major industrial projects. The federal Supreme Court has just recently denied the existence of a constitutional 'right to clean air.' On the other hand, it has refused a new ski runway in an environmentally sensitive area.

[20] Convention on International Trade in Endangered Species of Wild Fauna and Flora, 12 I.L.M. 1088 (1973).

The access to environmental justice study clearly shows the judiciary instruments at hand—and their limits. It also shows where and why they are not utilized. In some instances, gateways such as mediation and arbitration are clearly more promising. However, in most cases, the issue of quantification and of conflicting (legitimate) interests overshadows the procedural gateways question. The right to environment is not the only new legal frontier. A whole set of new, collective human rights has emerged under the term of a 'right to development.' In this context, the question of priorities, especially in a free and democratic society, deserves further attention also in environmental research. The access to environmental justice process has started, albeit on a bumpy road. As the case studies show, failure and success often come together, with globalization playing its role on both sides. In comparison with the *res nullius* situation, which was basically unchallenged until only a few decades ago, the glass today is not three quarters empty, it is one quarter full!

Christian Häberli

Nicolas de Sadeleer, ed., *Implementing the Precautionary Principle: Approaches from the Nordic Countries, EU and USA* (London: Earthscan, 2007), 396 pages.

The book being reviewed deals with a very challenging aspect of environmental law: how to implement the precautionary principle on various levels and in various compartments of law. It is easy to have inspiring academic discussions of this principle but much more difficult to see how it plays out in the real world. Indeed, if we are serious about implementing it, we have to confront not only the fundamental rights and principles enshrined in national legal systems—for example, in administrative and constitutional law—but also, and perhaps more importantly, reality, which is still much dictated by economic development. Evidently, it is one thing for the politico-legal decision-making machinery to ask economic activities to modify their operations a bit if the scientific knowledge points to clearly harmful consequences, yet quite another to insist that economic activity be curtailed where science cannot demonstrate likely harm. In this respect, the book genuinely tackles one of the main challenges of environmental law by focusing not only on implementation but also on the implementation of a principle as demanding as the precautionary principle.

The book has been edited by a single scholar, Nicolas de Sadeleer, who is indisputably one of the pioneers in the research on the theory and practice of the precautionary principle. Indeed, he possesses both the theoretical capabilities and practical experience to act as the lead scholar in producing

such an ambitious work. As I was not aware of the process by which the book was compiled, I looked at page five for an explanation. There, de Sadeleer tells the reader that the book is primarily an outcome of his tenure as one of the first holders of an European Union Marie Curie Chair at the Faculty of Law at the University of Oslo. He has organized many academic seminars and meetings with environmental administrations in the Nordic countries—the culmination being the Conference on Ecological Risks and Precaution in the Nordic Countries, which was held in Oslo at the end of May 2005.[1] The presentations given at the conference form the bulk of this volume.

The title of the volume in itself shows how timely the work is. There has been too much talk about the development, status, and theoretical ideas underlying the precautionary principle or approach, but few actual studies of how it has been implemented in the different layers of legal systems. What better way could there be to show how the principle has been implemented in practice than to focus on legal systems known to be pioneers in developing environmental law—for example, those of the United States, the European Community (EC), and the Nordic Countries? Having said this, I felt a slight unease about the inclusion of a chapter on the US legal and political system, for it somehow did not seem to be in line with the other contributions. Indeed, since there is a strong interplay between the EC legal system and the Nordic member states (and Iceland and Norway via the European Economic Area Agreement), my first reaction to having one contribution from the United States was one of suspicion.

I. STRUCTURE

The structure of the book was not readily apparent to me at the outset. It begins with de Sadeleer's four-page general introduction entitled 'Origin, Status and Effects of the Precautionary Principle,' which is followed by his extensive treatment of the precautionary principle in EC law (Part I). Part 2 consists of a comparative analysis of the precautionary principle in the Nordic countries, with contributions from each of the five Nordic states and a concluding analysis by the editor. Part 3 then goes on to address the precautionary principle and the law of the sea, with the contributions including chapters on the fisheries regime and marine environmental regime for the Baltic Sea. For an international environmental legal scholar such as myself, the sequencing of these first three parts did not make sense, inasmuch as the hierarchical descent from EC law to national legal systems was followed by an ascent to international law.

[1] Nicolas de Sadeleer, ed., *Implementing the Precautionary Principle: Approaches from the Nordic Countries, EU and USA* (London: Earthscan, 2007) at 5.

Why did the book not start from the most general level—international law—and then move on to EC environmental law and national environmental law? The book would be more compelling if it had an introductory chapter on developments in international law leading into a treatment of regional implementations. (While de Sadeleer does provide a two-page introduction to those developments, it does not really give the reader what he or she needs—an extensive treatment of how the precautionary principle has evolved in international law.) With such a start, the chapters now comprising Part 3 could have been placed at the beginning, offering a more logical overall structure. The studies of the precautionary principle in EC law and the comparative study of Nordic countries would then have been followed by the more detailed contributions of Parts 4 and 5, which focus on genetically modified organisms (GMOs) and chemicals, respectively. In fact, de Sadeleer opts for this more logical sequencing in the title and content of his concluding chapter, 'Lessons from International, EU and Nordic Legal Regimes.'

Parts 4 and 5 also contain their own 'unique' chapters. Part 4 is entitled 'Precaution, Genetically Modified Organisms and Biodiversity,' with 'biodiversity' referring to the final chapter of the section, 'The Precautionary Principle and Nature Conservation Law: EU and Danish Experiences.' The introduction to Part 4 states that the 'ultimate avatar of the Promethean myth—biotechnology—has been the favoured field for implementing the principle…Part IV explores the manner in which the principle is being fleshed out in EC, Norwegian, Danish and Finnish law.' However, it is difficult to see how the Danish perspective on biotechnology is taken up as the chapter focuses on nature conservation. Part 5 is lopsided in its focus on the proposed registration, evaluation, authorization, and restriction of chemicals (REACH) regulation (EC law) at the expense of Nordic experiences, which consist of the treatment of Swedish chemical law and policy in Chapter 16. At the time of writing, both authors dealing with REACH spoke of it in the future tense, as it had not yet entered into force. The regulation, adopted on 18 December 2006 through the co-decision procedure, entered into force on 1 June 2007 (EC Regulation no. 1907/2006 Concerning the REACH.

As noted earlier, Part 5, whose title focuses explicitly on chemicals, contains the chapter on the US legal system. The contribution is an interesting account of the general evolvement of the precautionary principle in US policy and law but, unfortunately, only covers implementation of the principle in US chemicals policy and law in passing. Its inclusion in the volume—even to the extent that the United States is mentioned in the name of the book—is for me perhaps the most difficult choice to understand. Why include a chapter on the United States when the book focuses on the interrelationship between EC law and the Nordic legal systems? Moreover, the

chapter does not contribute to the overall goal of giving the reader a better idea of the regulation of chemicals in the EC by contrasting it with the corresponding legislation in the United States because the general focus of the contribution is elsewhere. This mismatch of content is reflected in the fact that the final 'lessons learned' chapter by de Sadeleer does not draw any lessons from the US case.

I am not convinced of the need for the brief introductions (from one-half to two pages in length) to all of the five parts by the editor, which are not mentioned in the table of contents. These do not sufficiently set out the basics for the reader to enter a new subject area, and, to my mind, it would have been better to expand the general introduction to the book, which is now only four pages, including a description of the structure of the work. In addition, the introductions seem to contain similar sentences and become repetitive as the volume progresses.

II. QUALITY OF THE CONTRIBUTIONS

In general, the contributions are clearly of high quality, and one can only congratulate the editor on successfully bringing together such a world-class group of scholars as contributors to the volume. I was particularly impressed by Part 2, where leading environmental law scholars from the Nordic countries examine how the precautionary principle/approach plays out in their respective legal systems. Even though Part 5 on chemicals focuses excessively on REACH, it was very interesting to read Gerd Winter's and de Sadeleer's positions on the regulation, as their perspectives differ considerably—and thus complement each other nicely (Winter studies how REACH can accommodate the different interests involved and de Sadeleer criticizes the regulation from various angles). Tore Henriksen's chapter on precaution in fisheries management is an in-depth and clear exposition, starting from the global regulatory developments and proceeding via the EC common fisheries policy to the regional and national level. His contribution, to my mind, shows the direction in which legal research needs to move—that is, one needs to penetrate all the layers of law in order to fully grasp the background of regulation on each level and the reasons why it has been implemented the way it has.

The recurring problem with contributions from representatives of institutions is that one wants to include them—such practitioners, if anyone, really know how the institution functions—but it is very difficult to induce them to be critical of their institution. This task falls to the editor, and it is not an easy one. Chapter 9 on the precautionary principle and the Helsinki Commission (HELCOM), a governing body of the Convention on the Protection of the Marine Environment of the Baltic Sea Area, is a collaborative effort of five contributors, all of whom have links with

HELCOM.[2] The chapter has only seven pages of text and views the work of HELCOM as manifesting the precautionary approach in a slightly too optimistic fashion. It would have been important to bring in the contrast between regulatory achievements and the ever-degrading state of the Baltic Sea marine environment to put the precautionary approach in its proper context. Chapter 12 by the European Commission legal adviser avoids many of the pitfalls of being overly optimistic with regard to the achievements of the EC in GMO regulation and achieves what is sought by involving practitioners: the contribution is a very clear and in-depth contribution to the topic.

III. PRECAUTION: PRINCIPLE OR APPROACH?

If one wants to challenge oneself as an environmental law scholar, this is the book to read. The diversity of perspectives and the depth of the positions on the precautionary principle/approach challenge anyone thinking that they already knew the basics of the principle or of environmental law in general for that matter.

Even though the book is about implementing the precautionary principle, the status and pedigree of the principle/approach seem to pop up in almost all of the contributions. Nicolas de Sadeleer considers the debate on whether there is any legal sense in distinguishing between the 'precautionary approach' and 'the precautionary principle' a semantic squabble: '[F]rom a legal point of view, the question is whether precaution could become a principle of customary law in international law, on the one hand, and a general principle of environmental law at the national level, on the other. The answer to that question depends upon whether a number of criteria set out by courts and scholars alike are fulfilled.'[3] This is, of course, one viable perspective. One might also read more into it, however, given that many times the choice between 'precautionary approach' and 'precautionary principle' is made intentionally by law-givers, be they states or parliaments. In his contribution on fisheries, Tore Henriksen provides, to my mind, a more nuanced analysis of this question, concluding that '[t]he reluctance of states to commit themselves to the precautionary principle is still a relevant factor to consider when interpreting and applying the obligations under the precautionary approach.'[4]

In addition, I would not frame the question of precautionary approach versus principle as one of whether it has or has not become a principle of law in international or national law. To my mind, Jussi Kauppila provides

[2] Convention on the Protection of the Marine Environment of the Baltic Sea Area, 32 I.L.M. 1069 (1993).

[3] *Ibid.* at 3. [4] *Ibid.* at 155–6.

a better analysis.[5] Drawing on Dworkin, he asserts that principles must be distinguished from rules in that the former are not all-or-nothing entities and also when it comes to recognizing their legal status in a legal system. It is perhaps best to say that principles have more or less institutional support in a legal system, and we can thus speak of the varying degrees of legal support that a principle enjoys as applying across the whole legal system (as opposed to a particular policy sector). Indeed, it would seem difficult to view a legal principle as abstract as the principle of precaution as being one that could enter—or even be enacted as part of—a legal system and could perhaps, under this positivistic logic, also be terminated.

There are various regulatory contexts identified in the book in which the precautionary principle plays a significant role. Importantly, Hans Christian Bugge (Chapter 6) points to the difference in the roles that the principle plays in international trade law and in environmental law. In international trade law, there is a different burden of proof than in environmental law. In the latter, the strict version of the precautionary principle would have it that an operator must show that its activity entails no severe risks, whereas in trade law a state restricting trade on the basis of future risks has to show that precautionary measures are justified. Bugge warns against a development whereby 'trade related conditions and criteria are also invoked outside international trade cases in order to limit the possibility of the authorities to carry out a strict environmental policy,' an admonition that certainly is timely given the quickening development and importance of international trade law.[6] This warning is echoed by de Sadeleer in Chapter 18, on REACH, where he identifies the risks posed to a stricter and more precautionary chemicals policy by the legal rules and principles safeguarding the functioning of the internal market and, in particular, the rules guaranteeing the free movement of goods. Gabriel Michanek, in Chapter 7 on Sweden and the precautionary principle, shows interestingly how the comprehensive 1998 Environmental Code and its explicit endorsement of the precautionary principle (whereby it is the polluter who carries the burden of proof of showing that risks do not exist) has its roots in the 1941 amendment to the Water Act. Nicholas Ashford, for his part, provides an important comparison on the way the precautionary principle made its way into the legal systems in the EC and the United States, outlining how it started in the United States with worker health and safety regulation. Overall, the book is good testimony to the generalizable aspects of the precautionary principle as the society we are living in takes a range of intentional and habitual risks in various policy fields. What is more, many times, and increasingly, it does so on the basis of science, which, as presented in Chapter 11 by Anne Ingeborg Myhr, might do well

[5] *Ibid.* at 248–50. [6] *Ibid.* at 104.

to focus on discovering and explicating the inherent uncertainties involved in studying complex systems.

IV. MAIN FINDINGS

Nicolas de Sadeleer tries to tease out some of the findings of Part 2 (Comparative Analysis of the Precautionary Principle in the Nordic Countries) in a chapter entitled 'Legal Status of Precaution in the Nordic Countries: A Comparative Analysis.' This is not an easy task given that the broad nature of the principle/approach makes it possible to focus on any number of aspects of the national environmental protection system and each of the five Nordic contributors evidently found some of the aspects more interesting than others. Further complicating a comparison at this stage of the book is the fact that some of the environmental policy fields where the precautionary principle plays a clear role are only marginally addressed in these country reports. The fields are dealt with in more detail in the later chapters of the book.

There is one question that, to my mind, should have been dealt with in any event in the 'lessons learned' chapter. In the introduction to the comparative Part 2, de Sadeleer refers to the reputation of Nordic states as countries that place environmental issues high on their agendas. After the five country reports, however, the reader is surprised that no conclusion is drawn as to whether this holds true. Presumably, if they have implemented the precautionary principle/approach in their national legal orders, they have lived up to this reputation. In fact, the reports seem to indicate—quite contrary to the original hypothesis—that the Nordic states, by and large, have only meagrely acted on the basis of the precautionary principle/approach. This is not to say that de Sadeleer has not noticed this but, somehow, that he seems to over-analyze the situation in the concluding chapter to the extent that this major finding does not come out. In my view, even though the legal reality in the Nordic states is complex, one can say, if anything, that, surprisingly, the countries have not done that well in putting precaution into practice in their environmental law systems, which testifies in general to the difficulty of protecting the environment without the aid of clear scientific proof. I sought this finding in the concluding chapter of the volume, 'Lessons from International, EU and Nordic Legal Regimes,' but could not find it there either. Overall, however, the comparison made by de Sadeleer succeeds in finding the aspects that can be compared and allows the reader to analyze the issues further. If one's ambition had been to draw clearer findings, one would probably have had to either ask the contributors to address the same set of questions or confine the focus of the book to one policy area.

V. OVERALL ANALYSIS

Editing a book is always a challenge. In an ideal world, one would be in a position to select the best possible contributors, who would have limitless time available for their contribution and who would do exactly what one wanted them to. Yet in this world of ours, as an editor one must make a number of compromises with regard to the contributors, one's own time commitments, and the (sometimes frustrating) requirements of the publisher. The outcome, the book, does not necessarily have a life of its own. Rather, the process by which it is produced is many times beyond the control of its editor(s). Even though I have criticized some aspects of this book, overall I feel that it is an immensely important contribution to a very timely topic. We do not live in an ideal world where it would be possible to produce a book entirely to one's liking. De Sadeleer has done his best with the material he has had and, despite some questionable editorial decisions, has been able to energize a process and its outcome—this book—to genuinely challenge us to think what we mean by the precautionary principle and how we go about implementing it.

The core of the book is the excellent contributions, including the two very in-depth and high-quality contributions by de Sadeleer in Chapters 2 and 18. All of the contributions meet the quality that I as a reader have a right to expect. I must say that I was very impressed by the quality of the contributions from the Nordic states, which testifies to the high standard of environmental law scholarship in these countries.

When reading the book, I found myself pondering the theory and practice of not only the precautionary principle but also of law in general. When reading and thinking of implementing something that challenges the 'risk society' we are living in the way the principle of precaution does, one is bound to stretch one's intellectual muscles to grasp the role of law in general in such a society as well as our place in it. If these are the kind of ideas that the book provoked in me, I can honestly recommend it not only to the obvious target audience—environmental lawyers—but also to anyone interested in law and legal theory.

Timo Koivurova

Nathalie Bernasconi-Osterwalder et al., *Environment and Trade: A Guide to WTO Jurisprudence* (London: Earthscan, 2006), 363 pages with an index.

The relationship between environment and trade has become over the last decade a most contentious issue. The debate on environment and trade takes place in both the negotiations of new international environmental

instruments and the ongoing negotiations under the Doha mandate within the World Trade Organization (WTO). While some are concerned that the WTO is promoting reckless free trade leading to massive destruction of our environment, others are afraid of attempts to veil protectionism with green arguments. The environment and trade relationships involve divergent concerns, fears, and misinterpretations and, of course, a rich and rapid growing list of academic and non-academic publications. The debate about green protectionism versus reckless free-trade pollution is often a debate between the dumb and the deaf, it is over-politicized and over-emotionalized, based on fears from hidden agendas and other ghosts, and most often the result of an inadequate understanding of the international trade and environment regimes.

In this context, the book *Environment and Trade: A Guide to WTO Jurisprudence* by Nathalie Bernasconi-Osterwalder, Daniel Magraw, Maria Julia Oliva, Marcos Orellana, and Elisabeth Tuerk is a very helpful and valuable contribution. By summarizing and analyzing the relevant WTO provisions and the relevant General Agreement on Tariffs and Trade (GATT) and WTO jurisprudence, it provides a factual, non-partisan overview of the major themes relevant to the environment and trade linkages. Through this account, it offers a convenient and easy-to-use tool for practitioners, academics, students, civil society, and policy makers who work on environment and/or trade issues. This guide to the WTO jurisprudence on trade and environment is written by the attorneys of the Center for International Environmental Law and thus brings together a team of highly competent and knowledgeable experts who know and understand the issue both from an academic and practitioner perspective. The book clearly also benefits from the fact that it does not want to promote a certain position in the ongoing trade-environment debate but that it brings together, summarizes, and analyzes the relevant WTO and GATT rules and the decisions from a factual perspective.

The book covers all of the most relevant themes of the trade and environment interlinkage: (1) like products; (2) general exceptions clauses; (3) the 'necessity requirement'; (4) processes and production methods, including eco-labelling; (5) extraterritoriality; (6) the role of science and the precautionary principle, including the relationship of trade rules and environmental agreements; (7) intellectual property rights and the conservation of biological diversity; and (8) participation in WTO dispute settlement and *amicus* briefs. Each theme is dealt with in four sections in separate chapters: a first section with background information is followed by a section discussing the relevant WTO provisions, including how GATT and WTO tribunals have interpreted these provisions. A short third section refers to selected literature. The fourth and biggest section, which chronologically covers the relevant jurisprudence under the GATT and the WTO