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Book Review

Leslie-Anne Duvic-Paoli, *Prevention Principle in International Environmental Law* (Cambridge, UK: Cambridge University Press, 2018), 390 pages.

The principle of *sic utere tuo, ut alienum non laedas* in international law prohibits states from conducting or permitting activities within their territory that harm other states. This principle, also known as the principle of good neighbourliness, is the foundation of environmental law. This principle itself is premised on principles and approaches aimed at preventing harm to the environment. Among these principles, some have received scholarly attention, while others have been side-lined despite their significance and contribution to environmental protection. The prevention principle is one such principle.

Leslie-Anne Duvic-Paoli, through her book *The Prevention Principle in International Environmental Law*, analyses the prevention principle, which was first applied in international law to prevent transboundary harm due to activities in one state in the landmark decision in *Trail Smelter*.[1] The author examines the customary international law principle of prevention[2] to elucidate its rationale, scope, and content, thus engaging the reader through historic and conceptual perspectives. Often recognized as a part of the precautionary approach or sustainable development, the prevention principle, according to the author, deserves more attention and investigation to clarify states' duty and to ensure definitional clarity to other entwined norms in environmental law. This book, structured in four parts, follows a trajectory from historic to conceptual analysis to present the reader with an analytical framework consisting of a trilogy of the rationale, scope, and content of the prevention principle.

Part 1 discusses the origin and development of the prevention principle as the golden principle of environmental protection. Prevention has its origin in two basic principles employed by international law for natural resources protection: the curative approach and the pro-active approach. The curative approach, which is characterized by the 'no-harm rule' and 'reparation in case of occurrence of harm,' is aimed more at the protection of sovereignty than environmental protection Developed as an alternative approach to the curative approach, the pro-active approach employed for resource management, despite involving an environmental rationale, considered natural resources as an economic commodity for the exploitation and development by states. Duvic-Paoli observes that both approaches contributed to the development of prevention, which

[1] *Trail Smelter (United States v Canada)*, 16 April 1938 and 11 March 1941, reprinted in UNRIAA, vol 3 (1941) 1905.

[2] *Legality of the Threat or Use of Nuclear Weapons* (Advisory Opinion) (1996) ICJ Rep 226, para 29.

transformed as an international obligation from a policy perspective since the 1972 Stockholm Declaration.[3]

Part 2 examines the sources of prevention and attempts to examine various manifestations of prevention in treaty law, customary law, and jurisprudence. Through these chapters, the author aims to distinguish the source of prevention and match these sources to its appropriate manifestations. She also highlights the customary status of prevention through elucidating custom codification works of various forums. She indicates that uncertainties in determining the two formal requirements of custom—*opinio juris* and state practice—have not threatened the customary status of the precautionary principle. On the contrary, the difficulty of meeting the two requirements of custom is merely a function of the reality of implementation challenges of environmental law. Duvic-Paoli illustrates that, unlike other norms, the prevention principle is deeply indebted to international tribunals for its exponentially increasing significance, which also manifests change in the perception of states in adjudication of environmental harm and protection of the right to life.

The conceptual approach to prevention is the core of Part 3, which focuses on anticipation, proactivity, and environmental protection. Deviating from the traditional curative approach, the prevention principle anticipates risk and derives its material scope on foreseeability and the magnitude of risk. The author identifies temporal scope of prevention in three time frames: imminence, emergency, and response. The anticipatory framework of prevention requires the state not only to prevent harm but also to adopt positive measures to protect the environment. Thus, the due diligence component of prevention balances state responsibility of controlling environmental harm by non-state actors and 'autonomy and flexibility' in adopting pro-active measures in preventing environmental harm. Elements of due diligence, according to the author, cannot be generalized but, instead, need to be analysed on a case-by-case basis. Such analysis includes two core manifestations: the obligation to undertake an environmental impact assessment and the duty to act in a cooperative manner. The scope of prevention extends beyond territorial boundaries due to the obligation of the state to prevent transboundary harm. The author extends the analysis of the transboundary nature of harm to include a human rights perspective, illustrating that human rights obligations to prevent extraterritorial harm is at a nascent stage with a huge potential for further exploration. Cautioning that 'Westphalian territoriality is not dead,' she points out that the extraterritorial nature of the prevention principle challenges the 'territorial model of international law' and contributes to the 'deterritorialization of international law' (at 258).

The concluding part of the book has a codification and normative component. This part examines interactions of the prevention principle with different subjects and institutions of international law. Here, I was fascinated by the

[3] Stockholm Convention on Persistent Organic Pollutants, 2001, 2256 UNTS 119.

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interesting and thought-provoking question she raises: whether subjects other than states have an obligation to act diligently in the face of environmental harm? In many cases, it is the non-state actors who cause environmental harm. Their activities are attributed to the state at the international level, which forces the state to prevent such environmental harm. International law casts the responsibility to prevent only on its subjects—the states—for activities of individuals in their territory. Analysing the multifaceted nature of prevention as a norm, principle, rule, or right, the author examines that the obligation of due diligence under Principle 21 of the 1972 Stockholm Declaration is confined only to states. She argues, however, that this should be extended to all other actors responsible for environmental harm. Debates on climate change adaptation, mitigation, principles of common but differentiated responsibilities, and intended nationally determined contributions underscores that the primary responsibility of prevention and curation is vested upon the states. With the increase in climate change-related impacts and other environmentally harmful activities like water, air pollution, and water scarcity that infringes human right to life, it is necessary to extend the due diligence component of the preventive principle to non-state actors as well.

The book sets out the trajectory of the preventive principle and its role in environmental protection reflected through treaty law, customary practices, and jurisprudence. Although the preventive principle has a significant role in environmental protection, its nature, described by the author to be 'extremely elastic and general,' adds to the vagueness and ambiguities in interpreting the content and scope of this principle. Its complex and flexible nature is reflected in diverse judicial interpretations by various courts, which are often interrelated or intertwined with due diligence and the precautionary approach.

The preventive principle should also be harmonized with the principle of sustainable development. Obviously, the preventive principle is relevant to addressing the increased threat of environmental harm today. However, economic challenges of different countries vary. Often economic development is prioritized ahead of the environment in government policies. This is especially so in developing countries. In such cases, a general prevention principle, applicable to all countries uniformly, cannot apply. For example, historic emissions of developed countries have now resulted in climate change impacts throughout the world. Arguing for uniform or increased responsibility of developing countries to combat climate change through the application of the preventive approach would likely result in injustice. In this light, I feel that the preventive principle and differential treatment of states in environmental protection should have received a more elaborate discussion. Additionally, inter-generational and intra-generational responsibility of environmental protection also demands attention.

This book, which explores one of the main principles of environmental law through its rationale, content, and scope, is a treatise on the prevention principle.

Unlike other principles in environmental law, the preventive principle is at a nascent stage in academic research. This work offers a diverse and bold approach to analyse the preventive principle subtracted from precautionary principle with an analysis on the curative and reparation approach of states. Though the author tries to differentiate between due diligence and prevention, in some places the reader feels its intertwined nature. This seminal work, which is a significant contribution to international environmental law, is highly recommended to researchers, academicians, and policy-makers interested in understanding the principles employed in environmental protection.

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