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Book's review

***Bibliografia. MARIO GERVASI, Prevention of Environmental Harm under General International Law. An Alternative Reconstruction (Cultura giuridica e scambi internazionali, 7), Napoli/Baden-Baden, Edizioni scientifiche italiane/Nomos, 2021, pp. XVIII-430.***

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The 'no-harm' principle is without hesitation the bedrock of international environmental law. The obligation not to harm the environment in the territory of other States or in areas beyond national jurisdictions is a long-established rule, first identified in the 1941 *Trail Smelter* arbitration case,[1] that recent case law has clarified while highlighting some of its implications. In particular, the obligation not to cause damage has been understood as a positive obligation, and more specifically a duty of due diligence (an obligation of conduct and not of result). States must act with due diligence in order to ensure to the highest possible extent that activities that are carried out on their territory or within their jurisdiction do not cause harmful consequences to other States or to areas beyond their national jurisdiction. This obligation has been construed by the International Tribunal for the Law of the Sea (ITLOS)'s Seabed Disputes Chamber in 2011 as "an obligation to deploy adequate means, to exercise best possible efforts, to do the utmost, to obtain this result".[2] It is seen by the International Court of Justice as a broad and demanding obligation "which entails not only the adoption of appropriate rules and measures, but also a certain level of vigilance in their enforcement and the exercise of administrative control applicable to public and private operators, such as the monitoring of activities undertaken by such operators".[3] As such, this due diligence obligation requires States to regulate the conduct of private actors. The International Court of Justice sees it as a general – customary – obligation of due diligence from which a number of procedural obligations arise. Most scholars take the same view, considering that it is a customary obligation or even a set of customary obligations.

In his book *Prevention of Environmental Harm under General International Law,* Mario Gervasi proposes an alternative view, arguing that prevention of environmental harm

[1] *Trail Smelter case (United States, Canada)* (Award) [16 April 1938 and 11 March 1941], *Report of International Arbitral Awards,* Vol III (1920).

[2] ITLOS, *Responsibilities and Obligations of States with respect to Activities in the Area,* 2011, p. 41, §110.

[3] ICJ, *Pulp Mills on the River Uruguay (Argentina v Uruguay)* above p. 14, §197.

amounts to a general principle of international law, rather than a customary obligation. In doing so, he would like to help to "address the significant questions left unanswered by the current view of prevention" (p. 6). How can we not agree with him when he states that, despite growing case law, there are still many grey areas as to the exact content and scope of these obligations. In his view, these uncertainties are so significant that they "undermine the relevance of the purported customary obligation to prevent transboundary environmental harm" (p. 7).

In Mario Gervasi's opinion, the classification of prevention of environmental harm as a customary obligation is unsatisfying and shows some weaknesses (first part). Adopting a functionalist approach to the notion of principle, he considers that the prevention principle operates as a general principle, inspiring the formation of more specific rules and performing a guiding function within international law cases. He argues that this reconstruction is "not only plausible, but is also best suited to fit the reality" (p. 14) (second part). Mario Gervasi then tries to identify the customary rules informing and embodying it, wondering if the multiplication of treaty regimes has not hindered the emergence of substantive customary obligations (third part). To conclude, he considers that the principle of prevention is being progressively overshadowed by the concept of sustainable development so that "the principle of prevention proves to be incapable of effective cutting into the economic exploitation of natural resources" (p. 398). Mario Gervasi asks what role the principle of prevention might play in the future, in particular in an – hypothetical – de-growth scenario.

*Prevention of Environmental Harm under General International Law. An Alternative Reconstruction* is an original book in that it goes against current scholarship and even international case law. It is well-written and well-documented. In particular, Mario Gervasi demonstrates an in-depth knowledge of international litigation, which is abundantly commented on and exploited. He clearly outlines the inconsistencies in international jurisprudence. He also points out that it is a certain marginalisation of international practice that has led to our current understanding of the prevention principle. Doing so, he questions in a stimulating way many fundamental issues in international law: the notions of customary rules or general principles, the role of principles, the sources of international law, the protection of common interests or the potential role and limits of international law in the green transition. Even if the reader will not necessarily be convinced by the whole

demonstration, it is without any doubt a very interesting and recommended reading, providing abundant food for thought.

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