

BOOK REVIEW

L. Boisson de Chazournes, *Fresh Water in International Law*, Oxford University Press, Oxford 2013, xvii + 265 pp. ISBN 978-0-19-956508-5.

A natural given, or a most valuable asset? A public good, or a private commodity? With the advancing development agenda and the imminent adoption of a new set of so called Sustainable Development Goals (SDGs), a successor to the soon-to-expire Millennium Development Goals (MDGs), water again features prominently on the international agenda for 2015. An SDG ensuring the availability and sustainable management of water for all¹ not only seems timely but also more urgent than ever, taking into account issues such as water loss, water privatization, and water contamination. An up-to-date compendium on the issue of fresh water in international law thus comes just at the right time. Moreover, given the not yet definite decision on how to address this issue in the post-2015 development planning, Laurence Boisson de Chazournes with her book *Fresh Water in International Law*, as envisaged, indeed helps to deal with 'the complexity involved in the law's protection and management of this natural resource' (p. v). The book's novel and well-structured approach to the subject is already visible from the chapter headings, including those ending with -ization (chapters 3-6), but can be manifested further by addressing topics such as other sources of fresh water (chapter 2. IV.), the right to water and environmental and cultural protection (chapter 5. V. B.), and the provision of technical and financial assistance (chapter 6. IV.). A selected bibliography at the end and selected cases at the beginning ensure its suitability for students, practitioners, and legal scholars alike. Furthermore, despite the broad array of literature available on fresh water and on watercourses, especially in light of its brevity and clarity, the book constitutes a welcome addition to the field.

Setting the foundation for the ensuing seven chapters, Boisson de Chazournes chooses a tripartite approach to the topic, comprising of concise introductions to the significant remaining water challenges, the finite character of accessible fresh water on earth, and water opportunities as seen through a variety of lenses. The author thereby very clearly distinguishes the different dimensions of the issue which, nonetheless, need to be looked at 'from an integrated perspective' (p. 6) (chapter 1). The following chapter (chapter 2) then provides the 'classical' fundamentals of law applicable to fresh water. Yet, despite the evident focus on international watercourses, Boisson de Chazournes offers the reader a much broader insight in the evolution, scope, and development of legal regimes related to fresh water. Not only does she address emerging and 'forgotten' (p. 36) fresh water issues such as ice formations and atmospheric fresh water in an equally encompassing manner (p. 39-48), but Boisson de Chazournes also elaborates on the interaction of different sets and levels of rules, stressing that 'all levels – the universal, regional, and local – have an influence on international water law' (p. 51). The centerpiece of this compendium constitutes the following chapter, taking a closer look at the nexus between international economic law and fresh water as 'a source of economic benefit' (p. 54) (chapter 3). Its first part ranges from linkages between the principle of freedom of navigation and the freedom of trade to 'a practice towards the standardization of rules of safe navigation' (p. 64) and coordination and cooperation efforts in relation to the legal and policy framework covering infrastructure along watercourses (p. 65-77). In doing so, it gives a thorough overview of economic activities and uses linked to international watercourses. The ensuing second part of the chapter deals with challenges associated with the use and preservation of fresh water resources in the areas of international trade and investment, shedding light on the economization trend underway in the context of fresh water management. In a brief third part the author rightly concludes that for a 'mutual supportiveness between economic and non-economic norms' (p. 107), the emerging economization trend 'should go hand-in-hand with humanization and environmentalization trends' (p. 108). Consequentially, in the following two chapters Boisson de Chazournes examines the present tendencies towards environmentalizing and humanizing the law

¹Open Working Group of the UNGA, Proposal for Sustainable Development Goals, 1 August 2014, UN Doc. A/68/970, Goal #6.

applicable to fresh water (chapters 4-5). After laying out the main linkages between fresh water and environmental protection, the author provides a comprehensive yet concise overview of both international and regional agreements concerning fresh water resources, and their respective provisions to protect and preserve the environment. The compilation includes insightful background information on the evolution of various instruments and is complemented by two sections explaining the role institutional mechanisms and multilateral environmental agreements play in relation to the protection and management of transboundary fresh water resources. Boisson de Chazournes thereby not only reveals the interrelations between the broader field of international environmental law and water issues, but underpins her call for an 'evolutionary reading' (p. 144) of water treaties, i.e., the due consideration of the development of international environmental law when interpreting water agreements, with references to the case law of the International Court of Justice, and, more broadly, she presents trends towards greater coherence in international law. Further examining the -ization tendencies in international water law, the author continues by exemplifying how human needs have 'permeated' (p. 147) the law applicable to fresh water, not least due to fact that it is 'an area that is progressively relying on a dialogic approach' (p. 175). Revolving around a comprehensive, rights-based approach with the key element of a gradually emerging human right to water, the chapter illustrates the broad spectrum of linkages with this right, ranging from apparent issues such as sanitation and water access to influences by international efforts to protect health, the environment, and culture, as well as safeguards dealing with access to information and justice, and effective participation. The spectrum is completed by linking the human right to water to development assistance, as for instance in cases of impacts of large infrastructure projects, to armed conflict, when 'international human rights law can enhance access to water and sanitation' (p. 170), and to individual recourse to seek compensation for damage by, for instance, pollution. Subsequently, the analysis turns to the fourth -ization trend detected in the field of fresh water governance; institutionalization (chapter 6). Starting out with basin organizations and commissions, established as early as the beginning of the nineteenth century, Boisson de Chazournes demonstrates the significant development of these bodies anchored in a regional or local context, amongst others, by highlighting their important role in the field of environmental protection, and in the prevention of conflicts. The author continues the analysis of this trend by investigating the role of international organizations and institutions within the UN system, including mechanisms to provide technical and financial assistance. Moreover, she sheds light on the array of public and private non-state actors, and, here, too, elaborates on their increasing involvement in development aid. Yet, the most interesting part of this chapter may constitute Boisson de Chazournes' remarks on the contribution of technical and financial assistance to the respect for international law, may it be in the form of facilitating the negotiation of agreements between riparian states, or by means of inducing and restoring the compliance with such treaties. Based upon an exhaustive study of available mechanisms for resolving water-related disputes, the following chapter deconstructs the raising prevalence of water protection and management issues in international dispute settlement, both at the inter-state level and in relation to procedures involving non-state actors (chapter 7). Here, the author explains that due to the 'multifaceted nature of fresh water' (p. 199) one may not only find multiple types of disputes but also a diverse set of dispute settlement procedures, which maybe State exclusive or include non-State actors, be brought before courts and arbitration tribunals, or involve third parties acting as a mediator or a facilitator to settle disputes by diplomatic means and compromise. Adopting a twofold approach Boisson de Chazournes first looks at the case law of the International Court of Justice (ICJ), including its predecessor, the Permanent Court of International Justice, and, for water-trade disputes, at cases referred to the dispute settlement mechanism of the World Trade Organization, the North American Free Trade Agreement, or the Court of Justice of the European Union, before delving into procedures in which non-state actors are entitled to participate. Within this second strand, the author's observation of the growing role of the International Centre for Settlement of Investment Disputes (p. 219), her demonstration of the increased role of human rights-based approaches in settling disputes over water issues (p. 233), and her presentation of innovative compliance mechanisms under multilateral environmental agreements, e.g., the Aarhus Convention (p. 239-240), deserve attention. Moreover, several overarching tendencies pointed out by the author are noteworthy, namely, the considerable impact of dispute settlement on the

development of the principles, norms, and rules applicable to fresh water, the 'cross-fertilization' (p. 243) between the various institutions involved, leading towards a 'constructive dialogue' (p. 246), as well as tribunals' consideration of respective disputes as ones being matters of public interest (p. 248). The final chapter (chapter 8) provides a brief outlook of the previously discussed matters and puts them into the broader perspective of general international law which only recently has transcended the 'narrow prism' (p. 250) of the uses of international watercourses, broadening its perspective to include issues related to the fact that fresh water resources are of central importance to life and nature. In presenting various legal avenues and pathways, the author concludes with an appeal for a more integrated, coherent and holistic approach to the multifaceted, complex nature of this natural resource.

Altogether, Boisson de Chazournes to a great extent accomplishes the objectives pursued with her compendium. She indeed provides a thorough analysis of the 'origins and scope of the various bodies of international norms, while emphasizing their interconnectedness and necessary adaptation to one another' (p. v), and succeeds in presenting the reader with a 'detailed analysis of the practice of States and of international organizations, all the while taking into account the activities of the many non-State actors involved in the area of fresh water' (p. v). Regarding the latter, the author's considerable practical expertise in relation to international financial institutions (IFIs) becomes apparent. Her in-depth assessment of the provision of financial assistance in the area of fresh water (p. 190-195) reveals the central importance of this instrument for the further advancement of the satisfaction of human needs and compliance with international agreements, and stresses the many present and emerging connections between fresh water and environmental objectives in general, including threats posed to global environmental goods, as well as their integration into development aid and poverty alleviation programmes. In this regard, the emphasis placed on the involvement of the private sector rightly underlines the 'increased role of civil society, of which the private sector is considered to be a part' (p. 194). With the International Finance Corporation (IFC) serving as an interface between IFIs and businesses, and the reference made to its recently revised set of standards calling for the social and environmental sustainability of IFC-funded projects,² Boisson de Chazournes gives not only a timely example of the nexus between fresh water and overarching approaches towards a holistic implementation of the principle of sustainable development but also an example illustrating a contribution stemming from the field of international law. It is, then, all the more regrettable that when addressing the dispute settlement procedures of various IFIs, the author makes no reference to the IFC's independent recourse mechanism, the Compliance Advisor Ombudsman (CAO), which, similar to the World Bank Inspection Panel, has dealt with numerous complaints in relation to water issues,³ including one mentioned in the book, the *Chad-Cameroon Petroleum Development and Pipeline Project* in sub-Saharan Africa (p. 236 et seq.). In that regard, it would also have been opportune to point to the IFC-funded *Orion* project which, including complaints filed with the CAO, underlies the *Pulp Mills on the River Uruguay* judgment of the ICJ, to which the author refers on several occasions throughout the book.

All in all, despite this criticism, Boisson de Chazournes' work constitutes not only a valuable contribution to the field of international water law but also to the literature on international environmental law more broadly. The book's main assets are its clear structure and language and its many timely and illustrative, yet concise references to selected cases of various courts and tribunals, which greatly enhance the understanding of the subject matter and its particular value to practitioners. They make this compendium an informative and stimulating read, certainly not only for those who possess a profound interest in the topic already.

Birgit Lode

² See IFC Performance Standards on Social and Environmental Sustainability, Washington DC 2012, available at <www.ifc.org/wps/wcm/connect/115482804a0255db96fbffd1a5d13d27/PS_English_2012_Full-Documents.pdf?MOD=AJPERES>, accessed 15 March 2015.

³ For further details, see B. Lode, 'Die Internationale Finanz-Corporation – Nachhaltige Entwicklung im Rahmen der Förderung privater Unternehmen', 19 *Schriften zum Transnationalen Wirtschaftsrecht* (2012) pp. 280 et seq.

Postdoctoral Researcher, Project Leader
Institute for Advanced Sustainability Studies, Potsdam