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Review of Administrative and Expert Monitoring of International Treaties, edited by Paul C. Szasz

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Administrative and Expert Monitoring of International Treaties. Edited by Paul C. Szasz. Ardsley NY: Transnational Publishers, 1999. Pp. xiii, 270. Index. \$115.

International legal scholars, as well as those in other disciplines, of late have been particularly interested in issues of implementation, compliance, and effectiveness. Witness, for example, the American Society of International Law's sponsorship of a three-year, interdisciplinary project on compliance with nonbinding international instruments.¹ For international lawyers, this territory is somewhat uncharted, occupying something of a middle ground between the much more frequently explored areas of norm creation and dispute settlement. This upsurge of interest in nonbinding instruments reflects the realization by international lawyers and others that legal rules, however ambitious on paper, have little or no impact absent implementation. At the same time, since the nature of multilateral relationships is such that formal disputes may be rare, and binding third-party processes less common still, dispute settlement processes, however powerful in theory, may well be poor vehicles for assuring widespread compliance.

The present volume treats monitoring as a subset of this array of concerns about compliance. The bulk of the work, framed by an introduction by editor Paul Szasz, consists of analyses of two or three topics in each of three broad categories of international treaty regimes: human rights, the environment, and nuclear safety and arms control. The eight case studies reproduced in this work, prepared by fellows of the New York University Center for International Studies, provided the principal documentation for a 1996 conference at the NYU School of Law (with this reviewer in attendance). Included as appendices are keynote presentations by Ibrahim F. I. Shihata, the World Bank's former senior vice president and general counsel, and by the late Ambassador Winfried Lang of Austria.

Monitoring, which is defined by Lang as an examination of "[t]he actual behavior of states

vis-à-vis their obligations . . . by means of collecting data [and] screening national reports" (p. 255), emphasizes the assembly and evaluation of information. Viewed in this light, and as highlighted by Lang, monitoring is distinct from compliance or, in French, *contrôle*. Disarmament is perhaps the field in which monitoring, or the closely associated concept of verification, is most familiar. There the relationship to compliance is readily evident. For obvious reasons, parties to multilateral arms control agreements have a significant interest in obtaining information concerning the activities of other states—monitoring—for the purpose of assuring the adequacy of performance of obligations—compliance. The absence of such information may encourage defections by individual states uncertain of compliance by others, with a destabilizing or centrifugal effect on the integrity of the entire regime.

The framework or template for the volume's case studies is set forth in Szasz's introduction. He elaborates on the component functions of monitoring, including the collection of information through fact-finding or reporting, and the evaluation of the significance of that information—both of which may be undertaken either by neutral experts or by representatives of states. The supervisory machinery of the International Labour Organization, which might itself have been an excellent subject for one of the volume's case studies, is identified as an early example of monitoring. In clarifying just what monitoring is and is not, Szasz notes that the World Trade Organization's dispute settlement apparatus is fundamentally different in purpose from monitoring. The goal of monitoring is not to sanction violations, but to assist states "to improve and enhance compliance with treaty obligations" (p. 15).

In what is in itself a significant contribution, the case studies set out the structures, procedures, and mechanisms for monitoring a variety of multilateral treaties and related instruments. In some areas, such as the environmental agreements treated in the book, much of this information has not previously been collected in such a systematic fashion. In addition, the case studies generally contain historical and anecdotal material, potentially of precedential significance, describing how the regime has operated to date. For instance, Allison Jernow describes UN-sponsored on-site country missions to monitor human rights in Cambodia, El Salvador, and Guatemala. The individual chapters are, by and large, carefully executed, detailed, comprehensive, and

¹ See COMMITMENT AND COMPLIANCE: THE ROLE OF NON-BINDING NORMS IN THE INTERNATIONAL LEGAL SYSTEM (Dinah L. Shelton ed., 2000) (reviewed by Douglas M. Johnston, 95 AJIL (forthcoming 2001)); see also ENGAGING COUNTRIES: STRENGTHENING COMPLIANCE WITH INTERNATIONAL ENVIRONMENTAL ACCORDS (Edith Brown Weiss & Harold K. Jacobson eds., 1998); THE IMPLEMENTATION AND EFFECTIVENESS OF INTERNATIONAL ENVIRONMENTAL COMMITMENTS: THEORY AND PRACTICE (David G. Victor, Kal Raustiala, & Eugene B. Skolnikoff eds., 1998).

well documented. The reader obtains a good sense of the practical, real-world considerations surrounding multilateral monitoring.

The case studies, particularly when read as a whole, offer larger lessons. For instance, it becomes apparent that the identity of those engaging in monitoring may have a crucial impact on the character and ultimate success of that process. The most obvious distinction is between instructed representatives of governments, on the one hand, and independent experts appointed in their personal capacities, on the other. Monica Washington's essay on monitoring compliance with nuclear safety standards is perhaps the most insightful in this regard. Analyzing the significance of peer review by operators of nuclear installations from other states, she trenchantly identifies the pivotal transformation by which "[p]olitics is supplanted by technical considerations and international experts become quasi-ambassadors" (p. 213). Other constituencies besides governmental representatives and independent experts may also perform significant functions with respect to monitoring. The now familiar role of civil-society and nongovernmental organizations receives careful attention in Sasha Thomas-Nuruddin's case study concerning stratospheric ozone.

The integration of themes and the synthesis of results always present challenges in volumes in which case studies are central. In *Administrative and Expert Monitoring of International Treaties*, the authors of the individual case studies present larger and important insights that move the analysis beyond the scope of a single treaty regime. For example, R. Andrew Painter identifies a systemic dynamic when he observes that in the human rights field, "[m]erely seeking cooperation [via monitoring] often results in state inaction. However, excessive confrontation risks state non-participation or even resistance" (p. 49). Nonetheless, the keynote presentation by Lang is the only serious effort to synthesize the case studies into crosscutting lessons from the various treaty systems. He analyzes how monitoring differs from other functions, such as compliance-control, implementation, application, supervision, and surveillance. He concludes with the somewhat deflating observation that "[c]ompliance-control/monitoring in respect of disarmament and environmental treaties have little in common" (p. 258).

Shihata's presentation on the World Bank's role in each of the three areas under study is a bit off the topic but enriches the work nonetheless. He points to the bank's support of the en-

vironment and of economic, social, and cultural rights through its mainstream portfolio and such specialized trust funds as the Global Environment Facility. Otherwise, he stresses the limitations on the bank's functional mandate as enshrined in its Articles of Agreement, which supposedly prevent the bank from imposing conditionality based on such factors as a borrowing country's military expenditures and its record in the area of civil and political rights. Although one can trace similar themes back nearly a decade in the public statements of this important figure,² during that same period the bank's institutional agenda has changed dramatically. The impediments identified by Shihata have been largely irrelevant to major institutional reforms by the bank in such areas as the environment, which have been driven primarily by policy, and not legal, considerations.

If the reader is left with a lingering sense of a lack of fulfillment from this book, it is precisely with respect to the question that editor Szasz identified at the outset: to what extent does monitoring, and the methods by which that function is performed, make a difference in real-world outcomes? In all fairness, expecting an answer to such a question is arguably an unrealistic expectation from a book compiled by those trained in international law, a discipline largely devoted to normative pronouncements and whose predictive capacity is low. Explaining the real-world impact of international regimes is perhaps best left to another day and to other disciplines. At that time, economists, natural scientists, and international relations theorists will be able to consult *Administrative and Expert Monitoring of International Treaties* as an essential work on the structure and functioning of international oversight mechanisms.

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Human Rights in Global Politics. Edited by Tim Dunne and Nicholas Wheeler. Cambridge: Cambridge University Press, 1999. Pp. xi, 328. Index. £42.50, cloth; £15.95, paper.

The fiftieth anniversary of the Universal Declaration of Human Rights in 1998, coming in the decade after the resurgence of Western-style liberal democracies, has generated much writing

² See, e.g., Ibrahim F. I. Shihata, Remarks, 82 ASIL PROC. 41 (1988).