Liability for Transboundary Pollution at the Intersection of Public and Private International Law, by Guillaume Laganière, Hart Publishing, 2022, 312 pages

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Liability for Transboundary Pollution at the Intersection of Public and Private International Law,

by Guillaume Laganière, Hart Publishing, 2022, 312 pages

This monograph, based on the author's doctoral dissertation, delivers a solid description and analysis of the approach(es) taken by Canadian private international law when dealing with liability for transboundary pollution, and further discusses how the overall legal framework in respect of this theme is (or ought to be) influenced by principles of public international law. Precisely, the book's introduction already points that out when it asserts that "[a] *useful and often overlooked way to approach gaps and overlaps in transboundary environmental protection is to ensure that private international law reflects the policies entrenched in international environmental law*". This clear statement of intentions comes after setting the ground by providing an adequate overview of the topic's context, and before announcing that the book follows authors as Wai and Muir Watt, amongst others, in their "private international law as global governance" line of thinking (R. Wai, Transnational Liftoff and Juridical Touchdown: The Regulatory Function of Private International Law in an Era of Globalization, (2002) 40(2) Columbia Journal of Transnational Law 209-274; H. Muir Watt, Private International Law beyond the schism, (2011) 2(3) Transnational legal theory 347-427).

As a general appraisal, the monograph provides very useful perspectives on issues that are generally faced by any system of private international law that dares to tackle the conundrum of transboundary environmental harm (The author is clear from the outset about the fact that he conceives Canada as a case study for insights that may prove useful elsewhere). In this respect, the book is simultaneously a good introduction for newcomers to environmental themes in private international law, and food for thought for knowledgeable readers, who may find that certain developments are indeed thought-provoking. Without being exhaustive, it is very interesting to learn, for instance, that, in certain scenarios, the *Code Civil* of Québec submits the law applicable to most torts (save exceptions, but comprising environmental torts) to a predictability condition. The possibility of introducing a predictability condition in EU choice of law vis-à-vis climate-change-related torts (akin to the one already present in respect of product liability) has been supported by Lehmann and Eichel (M. Lehmann and F. Eichel, Globaler Klimawandel und Internationales Privatrecht – Zuständigkeit und anzuwendendes Recht für transnationale Klagen wegen klimawandelbedingter Individualschäden, (2019) 83(1) RabelsZ 77-110, p. 105), but (rightly) criticized by Kieninger (E.-M. Kieninger, "Conflicts of jurisdiction and the applicable law in domestic courts'proceedings," in W. Kahl and M-P. Weller (eds), *Climate Change Litigation: A Handbook*, Beck 2021, p. 144). As a further example, it is equally interesting (and inspiring) to learn that Canadian private international law does not share the problematic approach to public law standards that the private international law systems of certain European countries feature. Although current editions of handbooks do not tend to address this point in sufficient detail (cf. P. Mayer and v. Heuzé, *Droit International Privé*, Montchrestien, 2004, 8th ed., p. 77; A. Calvo Caravaca and J. Carrascosa González, *Derecho Internacional Privado*, vol. I, Comares, 2008, 9th ed., p. 337), it is well known that the judiciary of certain States is still entrenched in conservative and strictly territorial stances as regards the applicability of rules of public (administrative) law. This may lead to difficulties in transboundary environmental litigation, for

public law standards may play a substantial role in "defining" environmental damage. Even if those difficulties are not insurmountable (see E. Álvarez-Armas, Le contentieux international privé en matière de changement climatique à l'épreuve de l'article 17 du règlement Rome II: enjeux et perspectives, (2020) 3 Revue de Droit International d´Assas – Assas International Law Review 109, p. 118 et seq), Canada's progressive approach in this respect, as described by Laganière, is to be welcomed.

Possibly the book's most important contribution is to be found already in its first chapter, where Laganière traces the roots of a pro-environmental (i.e. content-oriented) approach to Canadian private international law back to the International Law Commission's *Draft principles on the allocation of loss in the case of transboundary harm arising out of hazardous activities* (annexed to GA Res 61/36 (4 décember 2006), UN Doc A/RES/61/36). The author conceives rules of private international law relevant to transboundary pollution as a means to allow States to fulfil their environmental duties under public international law, notably, their obligation to ensure that victims can obtain prompt and adequate compensation in situations of environmental harm. While Laganière himself highlights the fact that the said duty is an emerging principle of international environmental law, his analysis (supported by the opinions of Anderson, Barboza, Boyle and Orlando, for instance) is thought-provoking, and rightfully opens a debate on the need to promote pro-environmental adjustments to rules of private international law. Accordingly, connecting private international law aspects of transboundary pollution situations to public international law principles is a valuable conceptual endeavour for non-Canadian readers too, including European ones. The EU's approach to choice of law as regards non-contractual obligations arising from environmental damage is conceived as being grounded in the EU's own principles of environmental law, which justify the recourse to a choice-of-law solution that embodies the ubiquity principle (as a proxy for the *favor laesi* principle). While this is already self-sufficient within the EU legal order, Laganière's theoretical reinforcement further legitimates the EU's legislative stance. In sum, the author valuably links a pro-environmental (content-oriented) approach to private international law back to public international law elements, thus making his reflections on Canadian rules on conflict of laws potentially transposable to other jurisdictions.

After further developments on the importance of private international law's regulatory function for global governance in chapter 2, chapter 3 begins the specific analysis of Canadian rules as a case study, by focusing on rules on jurisdiction and on recognition and enforcement of foreign judgments, both in common law provinces and in Québec. Thus, Chapter 3 assesses whether, and if so to what extent, those rules live up to the expectations set by "equal access" (i.e. the requirement that "*a State treats a foreign plaintiff the same way it would treat a local plaintiff in legal proceedings*") which, according to Laganière, stems out from the above-referred notion of prompt and adequate compensation. Chapter 4 applies the same analysis to choice of law, referring this time to the notion of "equal remedy" (i.e. an equivalent requirement as regards the promptness, adequacy and effectiveness of remedies). At the risk of being repetitive, it is important to insist that these pages provide interesting comparative conflict-of-laws inspiration for private international lawyers interested in environmental themes elsewhere. The comparative exercise is facilitated for EU readers by the fact that Laganière himself resorts to descriptions of the relevant EU legal framework. Interestingly, he praises at various points the EU's use of the ubiquity principle both vis-à-vis jurisdiction (see the *Mines de Potasse* case-law: Case 21-76 *Handelskwekerij G.J. Bier B.V. & the Reinwater Founda-*

tion v. Mines de Potasse d'Alsace S.A. ECLI:EU:C:1976:166) and choice of law (see Article 7 of the Rome II Regulation). He does so because he considers that, under public international law, the ubiquity principle is the "gold standard" that all jurisdictions should aspire to implement in respect of the private-international-law management of transboundary pollution.

Admittedly, the book features multiple points where diverging opinions may be sustained. That is not problematic in itself, as it can positively nourish the debate on the issues covered. For instance, and without being exhaustive, the book mentions at various points elements pertaining to climate change as coming within the notion of "pollution". While climate change is certainly an environmental issue (and one would tend to think that damage derived therefrom should be, under most legal systems, "environmental damage"), it may be contended that it is not "pollution", but a phenomenon caused by it. Arguably, Laganière's approach is perfectly justifiable, as he resorts to Merrill's overly broad definition of such notion (T.W. Merrill, Golden Rules for Transboundary Pollution, (1997) 46 Duke Law Journal 931-1019, p. 968). However, the latter is not in line with generally consistent definitions present in many international treaties (see the analysis in D. Shelton, Human Rights, Health and Environmental Protection: Linkages in Law and Practice, (2007) 1(1) Human Rights & International Legal Discourse 9-59, p. 13). Equally, it is also arguable that the *sic utere tuo ut alienum non laedas* principle (which, despite being a key principle of international environmental law, is not prominent in the analysis) would have possibly further reinforced Laganière's positions at certain points of his argumentation.

This being said, all in all, the comments in the previous paragraph do not undermine the overall quality of the monograph, which provides a very good overview, from a Canadian standpoint, of issues pertaining to transboundary pollution in private international law and constitutes a very useful array of comparative-law lessons for other jurisdictions.

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The Cambridge Companion on International Arbitration,

édité par Chin Leng Lim, Cambridge University Press, 2021, 552 pages

Le professeur C.L. Lim, dans son ouvrage collectif *The Cambridge Companion on International Arbitration*, met à disposition des férus de l'arbitrage international un compagnon de route indispensable pour en appréhender les reliefs, et en saisir la substance.

Offrir à ses lecteurs, qu'ils soient chevronnés ou néophytes, une réflexion d'ensemble sur la matière par le biais d'un volume unique divisé en cinq sections, telle est l'ambition de cet ouvrage. Sa qualité, évidente à la lecture de son contenu, l'est tout autant à la simple consultation de la liste de ses auteurs, chacun d'eux ayant contribué à façonner l'essence même de l'arbitrage international durant les dernières décennies (*Foreword*, Lord D. Neuberger of Abbotsbury).

L'approche plurielle que revendique l'œuvre est accomplie avec brio au moyen d'une vingtaine de chapitres. Sont tout d'abord mis en exergue l'arbitrage international et ses remous historiques. Viennent ensuite l'arbitrage commercial international, suivi de l'arbitrage entre États et investisseurs étrangers, puis l'arbitrage inter- et intra-étatique. Enfin, les nouvelles problématiques, systémiques et trans-substantielles, qui affectent l'arbitrage international sont mises en lumière.