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National Defense and the Environment

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to anticipate (by understanding the other party's perspective, strengths, weaknesses, and concerns); adaptability (ability to deal with changes, failures, and exogenous events); and the consent of those involved in the conflict. (This view fits in with the observation that the rule to be learned from Somalia was categorically not to avoid "mission creep" but that failed states cannot be rebuilt when they are dominated by groups with self-serving, mutually destructive habits.)

The book emphasizes that peace operations that prevent or ameliorate crises are more fruitful than overlooking incipient state collapse and allowing matters to deteriorate into a Hobbesian reality. At the same time, *Peace Operations* acknowledges that even though the military can stabilize crises and separate warring parties, it cannot solve underlying political, social, or economic problems. Importantly, several of the essayists describe the requirements needed to prepare and educate our armed forces for peace operations: crowd control, negotiation, relations with UN civilian staff and nongovernment organizations (NGOs), and the employment of minimal force, inter alia.

Many Americans impatient with geopolitical nuances are uncomfortable with peace operations because the missions are often ambiguous and do not include victory as an objective, or even identify the enemy. This lack of democratic enthusiasm contributes to resistance on the part of the Pentagon wholeheartedly to accept MOOTW missions, preferring more traditional roles. In his chapter, A.J. Bacevich, of the Paul H. Nitze School of Advanced International Studies at Johns Hopkins, argues

that a desentimentalization of casualties is vital to the American military's acceptance of peace missions, be it interstate, intrastate peacekeeping, humanitarian, or peace enforcement. Because of its media-driven democracy, it is impossible for the United States to suffer or inflict casualties without internal political ramifications. Bacevich does well to note that "if policy makers expect the military to sign up for [peace] missions . . . then the death of American service members cannot be the basis for immediate and automatic recriminations directed at the services and their leaders, or for precipitous withdrawal that undermines the value of previous sacrifices." This is not to say that mass suffering and bloodletting is desirable or necessary, but that "the loss of a single rifleman does not constitute unacceptable calamity."

Although the book would have been strengthened by drawing on the expertise of Colonels Karl Farris and Mark Walsh at the U.S. Army Peacekeeping Institute, overall, *Peace Operations* is a valuable contribution that leads its readers to think about a topic which many of us perhaps unrealistically wish to avoid.

JEFF KOJAC

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Dycus, Stephen. *National Defense and the Environment*. Hanover, N.H.: Univ. Press of New England, 1996. 286pp. \$19.95

National Defense and the Environment, by Stephen Dycus of Vermont Law School, purports to offer a "new model for understanding the intersection of environmental and security priorities." As Dycus

accurately notes, the demise of a hostile Soviet empire has made possible the recognition of a wide variety of previously subordinated threats. Among these, the threat to the global environment is clearly one of the most evident and important. Dycus also correctly identifies an emergent consensus that the environment is a national security issue, and he applauds the generational shift that has resulted in the Department of Defense embracing this perspective. Given this contextual and attitudinal evolution, a new model for understanding the security-environment dynamic would certainly prove enormously useful. Unfortunately, *National Defense and the Environment* does not meet that need.

In fairness, the book is well written, interesting, and structurally sound. After raising the thematic question of whether national defense and environmental stewardship are compatible activities, Dycus addresses environmental planning, regulation, and cleanup. These chapters provide a helpful, albeit somewhat politicized, catalogue of the relevant legal issues surrounding the topic. Subsequent sections explore two real-world challenges currently confronting the national security establishment—base closure and realignment, and environmental protection during warfare. An analysis of existing enforcement mechanisms and prevalent principles of liability completes the substantive discussion. Ultimately, Dycus concludes that there is no inherent conflict between national defense and environmental protection, positing that “we can have it both ways.” He could not be more right.

Yet despite his justifiable conclusion, the author fails to make the case very

well. Instead, the reader is repeatedly distracted by the book’s numerous shortcomings. For instance, Dycus employs the effective technique of using short case studies to illustrate his points. However, some of the studies contain gratuitous statements unsupported by either factual background or cogent legal analysis. As an example, one of the book’s themes is that courts are excessively deferential to assertions of national security. To demonstrate, he uses a case study involving possible endangerment of Lake Paiute’s cui-cui fish by Naval Air Station, Fallon, Nevada. Yet it is only after alleging that the court paid its “usual deference” to the Navy’s interpretation of its statutory duties that the issue, which is in fact dispositive (i.e., whether viable alternatives to the Navy program exist), is mentioned, and then only cursorily. An analogous sin (of omission) is a tendency to ignore case histories, sometimes creating the impression that the decision under fire is the product of a renegade trial judge when in fact it may be that of a federal appeals court panel upholding the decision of a federal district court judge. Similarly, when an appellate court has acted, the grounds for appeal to that court are often missing. Again, the author runs the risk of misleading the reader as to the actual import of the decision.

Equally troubling is the sense of ivory-tower analysis with which readers having actual field experience are likely to be left. This is especially apparent in Dycus’s account of environment protection efforts overseas. For example, he criticizes the differing standards used overseas as less stringent than those applicable stateside. Technically, he is

correct. The Defense Department's requirement for compliance overseas with the more restrictive (either U.S. or host-nation) standards is a matter of *policy*, not law. As a practical matter, however, the distinction is meaningless to a commander, whose mission is compliance. Therefore, the fact that host-nation requirements in the 1990s are often more stringent than those found in the United States means that *greater* environmental protection is often provided overseas. Sadly, the professor seldom crosses the theory-practice divide. For instance, he grossly overstates the base commander's discretion regarding compliance and he criticizes the possibility of waiving standards but fails to cite examples of abuse. He even refers to a dated Government Accounting Office report noting that the Army had received eighteen host-nation claims for environmental damage, without indicating whether the claims were serious, let alone meritorious.

Most distressing is the book's shallow analysis of environmental protection during warfare. The two relevant treaties governing the subject are the Environmental Modification Convention (ENMOD) and Protocol I additional to the Geneva Conventions of 1949. Dycus dispenses with the former in a single paragraph, failing even to note that the United States is a party. When addressing the latter, he correctly states that while the United States is not a party, it views much of the Protocol as binding customary international law. However, what he does not mention (let alone explain) is that the United States is opposed to *both* environmental articles of the Protocol. Instead, the only criticism he offers is a quote from a decade-old law

review article, which distressingly includes an incorrect characterization of the Protocol's bearing on nuclear weapons. Indeed, when Dycus himself addresses nuclear weapons in the Protocol I context, he omits that the International Committee for the Red Cross intended for Protocol I *not* to be applicable to them, and that of the states participating in the negotiations only India argued for applicability. Also problematic is the author's suggestion that a prohibition on striking targets such as dams, dikes, and nuclear generating facilities that may release dangerous "forces" is in fact hard law. Missing in his discussion is the important point that the proscription derives from Protocol I, an article that the United States specifically opposes. To compound matters, Dycus regards oil tankers as prohibited targets even though the negotiating history makes clear that the three target types enumerated were exhaustive.

Other serious flaws include unnecessarily blurring distinctions between treaty prohibitions and those grounded in custom, and claiming that the United States does not view itself as bound by the Inhumane Weapons Convention, whereas the fact is we oppose only *one* of its four protocols. Further, when discussing Gulf war damage, Dycus confuses recourse to the International Court of Justice with claims procedures before the United Nations Compensation Commission. Finally, he does not acknowledge (as is required in an objective study) that the vast majority of international law experts characterize the existing law governing environmental damage during armed conflict as adequate. The result is an incomplete and

inaccurate picture of the applicable war-time legal prescriptions.

My main concern, then, is that this work fails to fill adequately a very real void in survey materials for those who might be seeking a quick introduction to the topic. The novice will be left with a distorted impression of the issue.

An important opportunity to convey effectively an even more critical message has, alas, been lost.

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Genest, Mark A. *Negotiating in the Public Eye: The Impact of the Press on the Intermediate-Range Nuclear Force Negotiations*. Stanford, Calif.: Stanford Univ. Press, 1995. 189pp. \$29.50

This small volume has an importance beyond its relatively narrow topic and terse academic prose. Since the Vietnam War, critics have argued that the media have acquired the capacity to determine—not simply report or influence—American foreign policy. However, up to now there has never been an irrefutable “smoking gun” to prove that press and broadcast journalists (reflecting their own agenda rather than that of the American public) could effectively limit the policy options available to government officials. Through content and quantitative analysis backed by after-the-fact interviews, researcher Mark Genest has gone the farthest in demonstrating that at least in the particular case of Intermediate-Range Nuclear Force (INF) negotiations between the Reagan administration and the Soviet Union,

the media did indeed attempt to force a policy result.

In retrospect, the INF agreement that removed SS-20s and U.S. Pershings and GLCMs (ground-launched cruise missiles) from Europe may not have had the strategic impact of the Strategic Arms Limitations Talks (SALT) or the Strategic Arms Reduction Treaty (START), but ironically it received more concentrated press attention than any other treaty in history. Genest points out that over a seven-year period attention to this single subject included over 4,800 articles in the *New York Times* and the *Washington Post* and two thousand minutes of major network evening news. The tone of the majority of these reports was that the Reagan administration was not doing enough to reach an agreement. Given all other world events, this is truly a staggering amount of time to devote to the ongoing negotiation of one treaty.

Genest opens his study by outlining three models of the impact of the media on policy: agenda-reflecting, agenda-building, and agenda-setting. A simple translation of these models is that the press can “report about,” “suggest,” or “significantly influence,” respectively, the outcome of policy making. However, his content analyses appear to point to a fourth model, agenda-dictating; but Genest is unwilling to take his theory that far, admitting that “most academics . . . refuse to take the leap from the agenda-setting theory to agenda-dictating.” Yet the book’s actual conclusions, based on a graphical comparison of the author’s content analysis of each press report, come very close to suggesting a potential for dictation: the “evidence . . . suggests that press opinion became a surrogate for public opinion.”