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INTRODUCTION

Transboundary Harm in International Law: Lessons from the *Trail Smelter* Arbitration

Rebecca M. Bratspies and Russell A. Miller

PERSPECTIVE

If you go to Trail, British Columbia, as most of the contributors to this volume did in March 2003, you can still see one of the two 409-foot smokestack built there by the Consolidated Mining and Smelting Company in the mid-1920s. It was this smokestack that accelerated a chain of events that ultimately produced the *Trail Smelter* arbitration and etched the name of this tiny Canadian town into the annals of international law.[1] Nestled in an alcove along the shores of the remote but majestic Columbia River, Trail seems an unlikely setting for a case that would assume a prominent role in the law of nations. But viewing the fateful smokestack, which seems somewhat diminished by the combined effect of the smelter's much expanded facilities and the surrounding peaks of the Canadian Rockies, one contributor to this book was moved to exclaim "arbitration works – the arbitration worked." It was a rare, unequivocal endorsement of international law, especially in such an improbable context.

Certainly, the Columbia River Valley, from northeastern Washington state upstream to Trail, is no longer routinely bathed in toxic fumes from the smelter. Gone are the plumes of sulfur dioxide, nitrous oxide, and particulate matter that cut a swath of damage in those earlier years, even while Trail continues as one of the world's most significant centers for mining and smelting. To this extent, the arbitration was undoubtedly a success. The name of the local hockey team, the "Smoke Eaters," now seems a quaint throwback to another time, although James Allum, in his contribution to this volume, puts the team's name to good use in his critical examination of the historical class structures operating in the *Trail Smelter* dispute. Cleaning up the smelter, and thus improving life in the local communities and ecosystems on two sides of an international border, if true,

[1] *See Trail Smelter Arbitral Decision*, 33 American Journal of International Law 182 (1939) [hereinafter "*Trail Smelter* (1939)"]; *Trail Smelter Arbitral Decision*, 35 American Journal of International Law 684 (1941) [hereinafter "*Trail Smelter* (1941)"]. *See* Annex to this volume.

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More information

would be no small matter. On this basis alone, the *Trail Smelter* arbitration would undoubtedly fall in the asset column of the ledger of international environmental accounting.

But how far-reaching was the success wrought by the investigation, litigation, decisional reasoning, and monitoring regime to which we refer throughout this volume as the *Trail Smelter* arbitration? With regard to the smelter itself, there are ample grounds for skepticism. As Neil Craik outlines in his contribution to Part One of this book, the beginning of the twenty-first century has seen the reemergence of environmental tensions along the border in the Columbia River valley. Current concerns surround the transboundary environmental damage the smelter has inflicted on the Columbia River itself. There were attempts during the *Trail Smelter* arbitration to bring the damage done to the Columbia River to the Tribunal's attention,[2] but those efforts were unsuccessful, and the smelter's harm to the transboundary Columbia River watershed remains unaddressed.

Looking beyond the smelter and its immediate environs, are there international environmental successes that can trace their origin back to the *Trail Smelter* arbitration? What, if any at all, has been the influence of the *Trail Smelter* arbitration on the approach of international law to transboundary harm more generally?

It was to explore these questions, with the benefit of the half century that had passed since the final decision of the Tribunal (and the benefit of proximity to the smelter itself) that we organized the 2003 Annual Idaho International Law Symposium, held in Coeur d'Alene, Idaho. This book is a product of the dialogue that began among the contributors at the symposium. It collects the commentary of a distinguished set of scholars who were asked to participate in a rigorous reflection on the *Trail Smelter* arbitration, and transboundary harm more generally, from three distinct perspectives. These perspectives form the three parts of this book:

- Part One: *Trail Smelter's* legal and historical foundations and its jurisprudential legacy in international environmental law;
- Part Two: *Trail Smelter's* significance in the normative framework for responding to transboundary environmental challenges, including some of the most pressing environmental problems confronting the international community today; and, most radically,
- Part Three: *Trail Smelter's* resonance in international responses to nonenvironmental transboundary harm.

PART ONE: HISTORY AND LEGACY OF THE *TRAIL SMELTER* ARBITRATION

The *Trail Smelter* arbitration is familiar to any student of international or environmental law. It is the first and, to this day, one of only a handful of international

[2] JOHN D. WIRTH, SMELTER SMOKE IN AMERICA 101–03 (2000).

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environmental law decisions. More specifically, it is usually the only case cited in which "transboundary damage was settled by the application of the general principles of international law on State liability for cross-border damage . . . "[3] Thus, the dispute between Canada and the United States required the Tribunal to decide, for the first (and, for an adjudicatory body addressing an environmental dispute, perhaps last) time, the limits of the fundamental legal concept of the sovereign equality of states. Where Canada's sovereignty implied the right to exploit its natural resources as it willed, that same sovereign norm protected the United States' right to the inviolability of its national territory. The activities of Consolidated Mining and Smelting in Trail, by virtue of climatic conditions that sent its emissions downstream and into the United States,[4] implicated both sovereign rights at the same time.

The *Trail Smelter* Tribunal navigated this clash of sovereignties by articulating what have come to be known as the *Trail Smelter* principles: (1) the state has a duty to prevent transboundary harm, which is commonly expressed in the Latin maxim *sic utere tuo ut alilenum non laedas* ("one should use one's own property so an not to injure another"); and (2) the "polluter pays" principle, which holds that the polluting state should pay compensation for the transboundary harm it has caused.[5] Both of these principles were first announced by the *Trail Smelter* Tribunal in 1941.[6]

The ensuing half century has seen expansive, almost mythological status attributed to the *Trail Smelter* Tribunal and these principles. Having solved the contradiction at the core of sovereign equality, so the reasoning goes, the Tribunal's decisions represent a triumph of international law and diplomacy. *Trail Smelter* has been proclaimed the *locus classicus*[7] and the *fons et origo*[8] of international law on transboundary environmental harm. Indeed, many multilateral environmental treaties endorse the normative quality of the *Trail Smelter* principles. This celebration of the arbitration's success is convincingly advanced in Part One of this book in a contribution from Stephen McCaffrey and a republished excerpt of an article written by John Read, the Canadian Agent in the arbitration and later a judge at the International Court of Justice.

3 Xue Hanqin, Transboundary Damage in International Law 269 (2003).
4 *Trail Smelter* (1939), *supra* note 1 at 194–98.
5 *Trail Smelter* (1941), *supra* note 1, at 716–17. *See* Alexandre Kiss and Dinah Shelton, International Environmental Law 107 (1991).
6 Cristina Hoss and Pierre-Marie Dupuy argue in their contribution to this volume that "invented" better describes the work of the Tribunal as regards these principles.
7 Günther Handl, *Territorial Sovereignty and the Problem of Transnational Pollution*, 69 American Journal of International Law 50, 60 (1975).
8 *See* Alfred P. Rubin, *Pollution by Analogy: The Trail Smelter Arbitration*, 50 Oregon Law Review 259 (1971). Republished in this volume. *See also* Robert Q. Quentin-Baxter, Second Report on International Liability for Injurious Consequences Arising out of Acts not Prohibited by International Law, UN Doc. A/CN.4/346 and Add.1 & 2, *reprinted in* 2(1) Yearbook of the International Law Commission 103, 108–12 (1981).

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However, despite the arbitration's ubiquity, there is surprisingly little depth to most invocations of *Trail Smelter*. The dispute's rich factual tapestry remains largely ignored, a criticism thoughtfully explored from various perspectives by James Allum, Jaye Ellis, and John Knox in their contributions to Part One of this volume. It is also a theme raised in articles by Karin Mickelson and Alfred Rubin, which are excerpted and republished here. All raise objections to ritual incantations of the *Trail Smelter* principles, challenging the rhetoric surrounding the *Trail Smelter* arbitration, and reconsidering the Tribunal's mandate, its decisions and their precedential weight.[9] *Trail*'s champions portray the arbitration as an expansive declaration of state responsibility and liability, with environmental principles and international law triumphant, but its critics point to the extraordinary narrowness of that victory. After all, under the Tribunal's reasoning, states are responsible for transboundary air pollution only when the resulting harm is "of serious economic consequence"[10] and established by clear and convincing evidence. Without proof of such harm, as Rubin has observed, "there appears to be no international responsibility at all [under the *Trail Smelter* Tribunal's reasoning] for acts of pollution."[11] In Part Two, Phoebe Okowa and Günther Handl take vigorous exception to this criticism of *Trail Smelter*.

Rounding out the contributions to Part One, Mark Drumbl and Mark Anderson explore *Trail Smelter's* relationship to traditional and contemporary, domestic and international jurisprudence on questions of responsibility, liability, and indemnification for harm. These matters were fundamental to the *Trail Smelter* dispute, and in many ways define the complex of interests affected by the Tribunal's resolution of the conundrum of conflicting sovereignties. In particular, Mark Drumbl considers *Trail Smelter's* significance for the International Law Commission's ongoing project of defining and codifying state responsibility (for wrongful acts) and state liability (for non–wrongful acts) in international law.

PART TWO: *TRAIL SMELTER* AND CONTEMPORARY TRANSBOUNDARY HARM

It is not mundane to remark, in fact *Trail Smelter* demands no less, that a boundary lies at the heart of every trans*boundary* harm.[12] An extensive body of literature grapples with the role boundaries play in many global environmental problems,

[9] *See, e.g.*, Samuel Bleicher, *An Overview of International Environmental Regulation*, 2 ECOLOGY LAW QUARTERLY 1 (1972); Rubin, *supra* note 8; Günther Handl, *supra* note 7; Quinten-Baxter, *supra* note 8.

[10] *Trail Smelter* (1941), *supra* note 1, at 716.

[11] Rubin, *supra* note 8, at 273.

[12] "With national boundaries in mind, the term 'transboundary' stresses the element of boundary-crossing in terms of the direct or immediate consequences of the act for which the source State is held responsible. It is the act of boundary-crossing which subjects the consequent damage to international remedy and initiates the application of international rules." HANQIN, *supra* note 3, at 9.

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often contributing to the creation of these problems and at the same time frustrating attempts to resolve them.[13] The contributors in Part Two of this book confront the constraints that sovereign boundaries (however sovereignty may be delimited and defined) play in resolving transboundary harms. With regard to this point, one particular lesson repeatedly emerges: the distinct character of the border at issue in the *Trail Smelter* dispute limits the precedential significance of the case.

The *Trail Smelter* transboundary dispute and adjudication occurred across a border, which, throughout its history, has been most distinctively characterized by American and Canadian efforts to downplay its functional significance. The point made by Phoebe Okowa and others is that the history of amicability and cooperation along the 49th parallel in North America made an adjudicatory resolution of the dispute possible.[14] But that amicability and cooperation undermine the relevance of the case for other, more complex transboundary situations. Borrowing from the title of John Knox's contribution to this book, one might be inclined to conclude that *Trail Smelter* involved the "wrong border" for establishing generally applicable principles of international law regarding transboundary harm.

Trail Smelter's relevance to contemporary transboundary environmental harm is further complicated because the case reflects a distinct, historical view of state boundaries. Territorial borders, generally speaking, "delineate areas within which different sets of legal rules apply. There has been, until now, a general correspondence between borders drawn in physical space . . . and borders in 'law space'."[15] The *Trail Smelter* Tribunal worked from a presumption that Canada not only ought to, but could, exert control over its territory. That presumption no longer rings true. Many contemporary environmental threats strain the traditional concept of sovereignty, defined as states' control over defined territories. Pollution, global warming, and loss of ecosystem services defy borders. Indeed, these contemporary problems exploit the limitations imposed by clearly demarcated boundaries of state authority, creating harms over which individual states have little control and few tools to combat. States face new dilemmas of shared risk – problems that cross borders, and issues that no single government can control. The challenge posed by transboundary harm thus represents the dark underside of the reshaped

[13] *See, e.g.*, Jutta Brunnée, *The United States and International Environmental Law: Living with an Elephant*, 15 European Journal of International Law 617 (2004). Bradley Karkkainan, *Marine Ecosystem Management & A "Post-Sovereign" Transboundary Governance*, 6 San Diego International Law Journal 113 (2004); Jutta Brunnée, *Of Sense and Sensibility: Reflections on International Liability Regimes as Tools for Environmental Protection*, 53 International and Comparative Law Quarterly 351 (2004).

[14] Perhaps for precisely these reasons, the U.S. and Canadian border has generated a rich body of international law. *See, e.g.*, Delimitation of the Maritime Boundary in the Gulf of Maine Area (Canada/U.S) 1984 I.C.J. 246 (Oct. 12).

[15] David R. Johnson and David Post, *Law and Borders – The Rise of Law in Cyberspace*, 48 Stanford Law Review 1367, 1368 (1996).

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relationship between states that the advances in technology, transport, and communications have produced.[16]

Conscious of the limits imposed by the unique characteristics of the boundary at the center of the *Trail Smelter* dispute, the contributors in Part Two of this book explore *Trail Smelter's* significance to some of today's most pressing transboundary environmental problems. They discover a diverse array of transboundary environmental issues converging in the shadow cast by the *Trail Smelter* arbitration. The Stockholm Declaration's Principle 21 and the Rio Declaration's Principle 2 trace their origins, more or less directly, back to *Trail Smelter*.[17] Many existing multilateral environmental treaties endorse the normative quality of the *Trail Smelter* principles. Encoded within the Tribunal's decisions were the basics of prevention, mitigation, and reparation by which transboundary pollution has since been understood and regulated. The *Trail Smelter* Tribunal, like contemporary international environmental regimes, had to respond to the competing imperatives of science, economics, politics, and environmental protection. In our own contributions to the book we explore, as does Phoebe Okowa, how the Tribunal struck this balance. We reach related but different conclusions about how *Trail Smelter* might speak to the use of science in resolving current environmental problems.

As Günther Handl explains, the problematic concepts of harm, responsibility, and due diligence, central to contemporary international environmental issues, also played out in the context of the *Trail Smelter* arbitration. Where Handl praises the arbitration's engagement with due diligence in his exploration of transboundary nuclear energy issues, Austen Parrish offers a more cautions perspective on *Trail Smelter's* legacy for contemporary hazardous waste issues. In the context of the law of the sea, Dean Stuart Kaye explores the limits of *Trail Smelter's* legacy when environmental harms cross the border between a sovereign state and the global commons.[18] James Jacobsen uses a comparison to the *Gabčíkovo-Nagymaros Project Case* to consider how the *Trail Smelter* principles interact with modern expectations about sustainable development.

[16] *See* David Held, *Democracy and Globalization*, 3 Global Governance 251, 257 (1997); Richard Dosecrance, *The Rise of the Virtual State*, Foreign Affairs 59–61 (July/August 1996); "In the modern world, this reciprocal relationship between States is further enhanced by the increasing interdependence of States facilitated by the advancement of technology and communication." Hanqin, *supra* note 3, at 289.

[17] *See, e.g.*, Report of the Stockholm Conference, U.N. Doc. A/CONF.48/14, princ. 21, *reprinted in* 11 International Legal Materials 1416, at 1420 (1972); Rio Declaration on Environment and Development, June 14, 1992, Annex I, princ. 2, *reprinted in* 31 International Legal Materials 874, 879 (1992); Framework Convention on Climate Change, May 9, 1992, Preamble, *reprinted in* 31 International Legal Materials 849 (1992).

[18] In this volume, we employ the term "transboundary" broadly, including within its scope harms that cross a single state boundary, several sovereign boundaries, as well as the boundary between state territory and the global commons beyond national jurisdiction or control. The breadth of the definition employed does not, however, detract from the conceptual work regarding borders achieved by the contributors to Part Two. It is a challenge *Trail* does not easily allow one to evade.

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PART THREE: *TRAIL SMELTER* AND TRANSBOUNDARY HARM BEYOND THE ENVIRONMENT

Transboundary harm is a term of art that international law reserves almost exclusively for environmental issues. Implied in the use of the term is a relatively direct line of causation from activity to physical consequences.[19] Scholars typically use the terms cross-border or transnational to refer to less tangible impacts that arise from, for example, economic or political activities that cross sovereign boundaries. We deliberately ignore this distinction. In breaking with scholarly convention on this point, we hope to provoke new thinking about what constitutes "harm." Defining "harm" or "damage," as the *Trail Smelter* Tribunal learned, may be the most confounding facet of forming a legal response to transboundary harm, but the simplicity and logic of the *Trail Smelter* principles invite consideration of their applicability to a broader conception of harm.

In its Draft Articles on State Duties to Prevent Transboundary Harm, the International Law Commission (ILC) accepted a distinction between physical and more inchoate harms when it defined transboundary harm to include a component of physical manifestations.[20] The contributors in Part Three of this book explore the limits of this definition by subjecting nonenvironmental harms to *Trail Smelter*'s transboundary lens. This conceptual move responds to the ILC's conclusion that only physical consequences trigger a state's duty to prevent transboundary harm, which seems an artificial formalism that neglects modern international environmental law's consciousness of social and ecological interdependencies. After all, environmental scholars have long recognized that "discriminatory trade practices" or "currency policies" are also likely to have "physical" and particularly "environmental" consequences.

Judith Wise/Eric Jensen and Jennifer Peavey Joanis, in particular among the contributors to Part Three, point to the indeterminacy of notions of harm. They echo Okowa's point that the *Trail Smelter* Tribunal's reasoning is intimately tied to physical manifestations of harm. Other contributors in Part Three reinforce Drumbl's claim that traces of the *Trail Smelter* Tribunal's struggle to define harm have been confronted and refined by the International Law Commission's decision to limit state liability for transboundary harm to those physical harms susceptible to relatively high levels of proof.[21]

[19] In her survey of the field, *Transboundary Damage in International Law*, Xue Hanqin eloquently makes this point. HANQIN, *supra* note 3, at 1, 5.

[20] Draft Articles on the Prevention of Transboundary Harm from Hazardous Activities, together with Commentaries, Article 1, Commentary (2), Report of the International Law Commission on the Work of Its Fifty-third Session, UN GAOR, 56th Sess., Supp. No. 10, at V.E.1, UN Doc. A/56/10 (2001).

[21] Draft Articles on the Prevention of Transboundary Harm from Hazardous Activities, together with Commentaries, Article 1, Commentary (2), Report of the International Law Commission on the Work of Its Fifty-third Session, UN GAOR, 56th Sess., Supp. No. 10, at V.E.1, UN Doc. A/56/10 (2001).

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Redefining "harm" also means confronting new actors and new victims. Although certainly a product of its time, *Trail Smelter* is nonetheless a surprisingly modern dispute. In a world shaped by multinational enterprises, international organizations, and the Internet, globalization has forced scholars and policy makers to grapple anew with the definition of transboundary harm. Nominally a dispute between two states, *Trail Smelter* also confronted this question. The arbitration bore all the ambiguities created by the contemporary involvement of multinational industrial interests and civil society in the global political economy. Thus, the situation that gave rise to the *Trail Smelter* arbitration has more in common than one might expect with many of the transboundary issues that arise from globalization. As one of the very few international law decisions squarely confronting the conflicting imperatives of sovereign equality and mutual dependence, *Trail Smelter* may offer lessons beyond its environmental roots.

Terrorism, Drugs, Refugees, Corporate Responsibility, and Human Rights: these are some of the most consuming issues of the twenty-first century. All can be construed as raising issues of transboundary harm. The contributors to Part Three of this volume engage with these issues and, with a glance at the *Trail Smelter* arbitration, join the ongoing debate over how diminished state control over territory, and the rise of new actors, shapes responses to transboundary harm. In doing so, they join the growing scholarly exploration of transboundary and cross-border issues.

Many of the contributors grapple with the lessons of the *Trail Smelter* arbitration as regards current debates over the proper balance between state duties of prevention, mitigation, and compensation. Cristina Hoss/Pierre-Marie Dupuy caution against an overbroad reading of what they term *Trail Smelter's* "reactionary" brand of state responsibility. Judith Wise/Eric Jensen, Nicola Venemann, and Jennifer Peavey Joanis join Hoss/Dupuy in expressing concern about the Tribunal's willingness to embrace, without remarking, Canada's voluntary adoption of the private smelter's actions for purposes of liability. This concern echoes the questions posed by Drumbl and Anderson in Part One of the book. Peer Zumbansen, on the other hand, seems more comfortable with the "attribution" question, and he sees a broader influence for *Trail Smelter* than do the other contributors to Part Three.

Where Zumbansen hears implicit echos of *Trail Smelter's* "contemplative legacy" in developing regimes of corporate social responsibility, Hoss/Dupuy are much less sanguine about the arbitration's influence on global responses to terrorism. In their analysis, they draw a strikingly different portrayal of *Trail Smelter's* approach to due diligence than did Handl in Part Two. Wise/Jensen flatly reject *Trail Smelter's* applicability to the myriad transboundary harms they identify as stemming from the international drug trade. Venemann's meditation on jurisdiction recognizes an inspirational resonance of *Trail Smelter* in the realm of extraterritorial application of international human rights regimes, while Peavey Joanis warns of the dangers inherent in applying *Trail Smelter* too readily to situations that produce international refugee populations. Holger Hestermeyer offers

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perhaps the most innovative analysis – considering *Trail Smelter's* relevance in the borderless world of the Internet.

In general, the authors conclude that the disadvantages of the *Trail Smelter* paradigm outweigh the advantages with regard to these nonenvironmental transboundary harms. However, many of them draw inspiration from the perspectives and ideas imbedded in the arbitration, even as they reject any doctrinal force in their respective fields for the *Trail Smelter* principles. In measuring *Trail Smelter* against some of the most pressing contemporary harms that cross borders, these chapters make for fascinating reading. Their conclusions reinforce the limitations and strengths of the *Trail Smelter* arbitration also present in the earlier sections of the book.

RÉSUMÉ: *TRAIL SMELTER* AS MECHANISM FOR CONCEPTUALIZING TRANSBOUNDARY HARM

The book underscores that any attempt at conceptualizing transboundary harm and international law's responses thereto must give consideration to the changing international economic and political order, and the wide range of actors vying to determine its content. In this respect, each contributor to this book responds in some way to the phenomenon of globalization and the consequent erosion of the self-contained state. Where the *Trail Smelter* Tribunal could presuppose, both politically and theoretically, "state control of space," or what Ulrech Beck has called "the container theory of society,"[22] such an idea is anathema to the postmodern thinker. The measure of control the *Trail Smelter* Tribunal attributed to the Dominion of Canada over the private smelter operating within its territory no longer rings true in the age of multinational corporations. Whether such an assumption was ever very accurate is beside the point; it was essential to the Tribunal's determination of state responsibility, and, more broadly, to the project of transforming Westphalian notions of "equality among states into the complex treaty-based system at the heart of modern international law."[23]

This volume also focuses attention on the inherent tensions between international liability regimes, which presuppose that harmful conduct will continue, and international prevention regimes, which seek the cessation of harmful activities. Measuring the arbitration against current social, political, and scientific conditions, the authors consider whether the hybrid liability and prevention regime crafted by the *Trail Smelter* Tribunal offers useful guidance for resolving questions of transboundary harm.

Given the diversity of views contained within these chapters, no *a priori* effort has been made to channel them into a single interpretive framework, theoretical

[22] Ulrech Beck, What is Globalization? 23 (Patrick Camiller trans., 2000).
[23] *See* S. S. Lotus Case (Fr. v. Turk.), 1927 P.C.I.J. (ser. A) No. 10 (Sept. 7).

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tradition, or consensus conclusion. Rather, the common foundation has been each contributor's engagement with the *Trail Smelter* opinions as a vehicle for reconsidering current debates over transboundary harm. The result is a rich menu of perspectives that reflects the debate, the uncertainty and the intellectual passion swirling around these questions.

To fully explore these transboundary issues, the authors view the *Trail Smelter* arbitration through many different lenses: jurisprudential, environmental, and geopolitical. Each chapter singles out a unique aspect of the *Trail Smelter* arbitration for further study, and together the chapters build a thick theoretical framework for exploring the decisions' many facets. The conclusions differ widely, and make for provocative reading. Although some authors draw substantive and procedural lessons from the *Trail Smelter* arbitration, others warn against the dangers of blindly, or too broadly, applying *Trail Smelter's* vision of state accountability. All agree that extrapolating too freely from *Trail Smelter* can become a perilous enterprise.

More than just an historical accounting of the *Trail Smelter* arbitration, this book seeks to reengage with the *Trail Smelter* arbitration and to reinvigorate discussions of its influence on international law. We were resolved to test *Trail Smelter's* legacy against today's transboundary challenges, fully embracing the possibility that doing so might unravel the arbitration's mythological hold over international environmental law. The project has made two things clear. First, *Trail Smelter* still has much to say as regards sovereignty, boundaries, and harm, the essential elements of transboundary harm. Second, there are contextual as well as conceptual limits to the relevance of *Trail Smelter*, with respect to both environmental and nonenvironmental transboundary harm.

With border-crossing conflicts multiplying and intensifying, approaches to resolving these conflicts have acquired new significance. The time is ripe to revisit *Trail Smelter* and to take its measure against this radically changed world. There are important lessons to be learned from a modern engagement with *Trail Smelter* – including both novel applications of the arbitration and a real sense of its limitations.

Big claims, indeed, for a little town and a pair of solitary smokestacks in the Canadian Rockies.

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