Marine Pollution and International Law: Principles and Practice. By DOUGLAS BRUBAKER. [London: Belhaven Press. 1993. 485 pp. including appendix, bibliography and indexes. ISBN 1–85293–273–2. £49]

THE purpose of this book, written by an American engineer turned attorney and now teaching and researching in Norway, is "to present as clear a picture as possible of marine pollution today and its attempted legal control". It comprises two parts. Part One, of 193 pages—"a broad overview"—deals with the nature of marine pollution from oil, other chemicals and radioactive substances, together with a discussion of the legal principles relating to its prevention, control and punishment. The types of marine pollution are seen as land-based (including airborne), vessel-source, exploitation-based and dumping. For each the author considers the relevant treaty and non-treaty rules. He concludes that the relevant non-treaty rules are vague and ill-adapted to deal adequately with marine pollution. The treaty law discussed includes, in particular, the general UN law of the sea conventions, the UNEP regional sea conventions, especially the 1976 Barcelona Convention for the Mediterranean, the 1972 London Dumping Convention, and MARPOL and other IMO conventions.

Part Two, of 260 pages, is devoted to an investigation of the problem in the Arctic Ocean, and more specifically to a case study of the Barents Sea, lying off the northern coasts of Norway and Russia. Finding both treaty and non-treaty law inadequate, the author proposes either a series of bilateral agreements among the five "Arctic-rim" States (Norway, Denmark (for Greenland), the United States, Canada and Russia) or, preferably, a comprehensive Arctic regional anti-pollution agreement. Several chapters are taken up in expounding the draft of such a "Convention for the Protection of the Arctic Region against Pollution", which the author has modelled on the Barcelona Convention.

Although the prose style of the book is in parts ramshackle and a closer attention toproof-reading would have been beneficial, it is an interesting and useful work whose title conceals the Arctic-related nature of much of its contents.

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Fact-Finding before International Tribunals. Edited by RICHARD B. LILLICH. [Ardsley-on-Hudson. Transnational Publishers. 1992. 338 pp. ISBN 0–941320–70–7. $60]

THE international community owes a perpetual debt to Richard Lillich; he does not let its problems rest but is ever mounting another conference to alert us to malfunction in the system and to search for suitable remedies. This time the occasion was the 11th Sokol Colloquium at the University of Virginia School of Law in March 1990, and the theme fact-finding and evaluation in international tribunals. As was to be expected from such a convenor a very distinguished company was brought together to debate these issues. Thomas Franck, Keith Highet, Pierre-Marie Dupuy and Richard Bilder covered the International Court of Justice, with an introduction by Judge Schwebel noting that the Chamber procedure provides a much better opportunity to get at the facts of a case than proceedings before the plenary court; Judges Howard Holzmann and Charles Brower with Jamison Selby reported on the Iran–US Claims Tribunal. The proliferating jurisdictions on human rights were reviewed by Frowein, Buergenthal, Farer, Hannum and David Martin. Dr C. F. Amerasinghe, the leading expert on international administrative tribunals, Thomas Carbonneau on international arbitration and Georg Ress on the ECJ completed the distinguished team.

The essential starting point for the discussion is the distinction between law and fact. Ress describes the distinction as fundamental "in so far as facts are a part of the physical world and should, therefore, be treated according to methods of natural and social science, whereas law is a largely spiritual phenomenon and should be investigated by 'normative', i.e. hermeneutical methods". But he notes the distinction to be relative in that the content of law is itself dependent on the comprehension of social reality and on occasions foreign law may itself be classified as "fact". Basing himself on a recent study by Schappele, Bilder challenges the validity of this fact/law distinction, describing it as nothing more than an institutional device to distribute decision-making and to channel to appellate courts the shaping of principles to solve future cases. Franck, in his paper, supports this thesis by identifying three cases where the ICJ avoided fact-finding by ruling on the law; in the *Temple* case a ruling on equitable estoppel barred a challenge to the factual basis of the boundary line on the map; in the *West Sahara* case the right of self-determination made irrelevant facts relating to the allegiance of nomadic peoples; and in *Nicaragua* v. *USA* a ruling that wrongful intervention by one State did not justify similar intervention by another State rendered irrelevant facts relating to the first intervention.

Fact-finding may owe much to the presentation of facts, an aspect of litigation not readily perceivable from a reading of the judgment. Highet gives a critical account of the conduct of the US case in *ELSI*, in which he himself served as counsel to Italy; he hints that US counsel's suggestion of conspiracy by Italian officials, abandoned halfway through the proceedings, documents doctored or mistranslated or produced only after order of the court and with damaging effect, the conversion of one of the US counsel into a witness: that all these matters, though not referred to in the judgment, had an effect on the outcome. Carbonneau deplores such adversarial tactics; advocate skills and confrontational techniques, he states, are based on a false assumption, that there is only one right answer. In his view, objective facts are rare, there are "no facts without judgment" and the sovereign character of the litigants before international tribunals makes the facts even harder to get at and even less significant. He sees the ICJ process more as one allowing parties to temporise, gain a distance and to talk at various levels.

So far the contributions, despite a diversity of viewpoint, provide a common sense of control, of ability to locate fact-finding as a useful but not predominant factor in the process of international decision-making. That impression is quickly dispersed in the papers dealing with human rights jurisdictions. Here the central issue to be determined is the degree of government involvement in mistreatment of individuals and the major obstacle that the greater part of the evidence is in the control of the defendant government. In these circumstances rules relating to nature and burden of proof are vital. So the European Court has adopted a standard of proof "beyond reasonable doubt", with modification. The Inter-American Court of Human Rights has gone further; in the *Honduran Disappearance* cases, it adopted a two-step approach: where no direct evidence was available, it was for the Commission or other claimant to demonstrate the existence of a governmental practice of disappearances and that the disappearance of the specific individual was linked to that practice; the burden then shifted to the government to rebut the presumption of disappearance at the hands of the government.

Human rights adjudication approximates in certain respects to criminal jurisdiction and is peculiarly dependent on credible determination of facts. Its study deters the reader from drawing general conclusions about international fact-finding. That may indeed be the only useful conclusion to be drawn from this book: that the significance and appreciation of facts vary from each tribunal depending on its task, its relation to other tribunals and the common law or civil law training of the lawyers who service it. Whether this be right or not, the editor Richard Lillich has made the book of continual interest to read. All the contributions are crisply presented, with clear subheadings, accompanied by an index and list of contributors.

HAZEL FOX