



Jus Corpus Law Journal

Open Access Law Journal – Copyright © 2025 – ISSN 2582-7820

Editor-in-Chief – Prof. (Dr.) Rhishikesh Dave; Publisher – Ayush Pandey

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Book Review: International Law and Sea-Dumped Chemical Weapons

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Received 27 February 2025; Accepted 27 March 2025; Published 31 March 2025

INTRODUCTION

Dr. Grant Dawson earned a Bachelor of Arts degree in Classics from Columbia College, a Juris Doctor (JD) from Georgetown University Law Centre, and a Doctor of Philosophy (PhD) from Groningen University, Faculty of Law. He frequently gives lectures and publishes articles on a broad range of legal subjects. Through this book, Mr. Dawson sheds light on the crucial topic of 'Sea-Dumped Chemical Weapons', which have tainted the marine environment. The book's narration pattern is its distinguishing feature. The author starts with the historical and scientific background to the problem of SDCWs, where governments decided to dispose of unwanted chemical weapons in the oceans, considering it as an endless void from which there is no return.¹ Then, it proceeds to explain the laws and their lacunas, regional agreements, and how customary practices of international law could be applied to prevent SDCWs. He concludes by emphasising the importance of collective global responsibility and underscores the need for

¹ Grant Dawson, *International Law and Sea-Dumped Chemical Weapons* (1st edn, Oxford University Press 2023)

legal enactments to ensure the protection of marine ecosystems for future generations. The ultimate aim of the book is to examine how the States could carry out the remediation of sea-dumped chemical weapons. By doing so, the book underscores the importance of collaborative responsibility by the States and the enactment of legal regimes for the remediation of SDCWs to restore balance to our ecosystem. The book consists of six chapters and a separate introduction and conclusion section.

THE BACKGROUND

The first chapter addresses the global issue of Sea-Dumped Chemical Weapons (SDCWs), focusing on their historical origins and environmental impact. Following both World Wars, oceans were used as dumping grounds for chemical weapons, a practice legitimised by the Potsdam Agreement in 1945. Around one million tons of chemical munitions were disposed of on sea bottoms throughout the world, especially in key sites such as the Baltic Sea and the North Sea, with the US and Russia being the primary contributors.

Chemicals dumped included mustard gas, lewisite, hydrogen cyanide, chloroacetophenone, phosgene, and nerve agents like sarin. Initially, ocean disposal was seen as safe due to the presumed vastness of the ocean. Still, subsequent research revealed that corroding munitions release toxic agents, which harm marine biodiversity and create marine deserts.

Growing environmental awareness in the 1970s led to the establishment of the Marine Protection, Research, and Sanctuaries Act, 1972 by the US Congress, which prohibited dumping into the Ocean material that would unreasonably degrade or endanger human health or the marine environment.² Further, the chapter discusses the effect of SDCWs on the marine environment and underscores the historical neglect of marine ecosystems. Therefore, it calls for legal protection for the marine environment.

² *Ibid*

DEVELOPMENT OF THE CHEMICAL WEAPONS CONVENTION (CWC), 1997

The book discusses the evolution and development of CWC and its relevance to SDCWs. The convention is a comprehensive disarmament and non-proliferation regime that encompasses the prohibition of not only the use but also the development, production, transfer, and stockpiling of chemical weapons. The author discusses the aspects and articles that obligate state parties to destroy chemical weapons that they own or possess or that are located in any place under their jurisdiction or control. The other articles of the convention explain what constitutes a chemical weapon, state declarations regarding weapons details, national legislation, and so on. The convention obligates all States to abide by the prohibition of the use of chemical weapons, regardless of whether they are parties to the Chemical Weapons Convention. This chapter also highlights the application of the convention to old and abandoned chemical weapons. However, a major setback of the convention is the clear exemption of pre-1985 SDCWs and the lack of clear provisions for SDCWs. To rectify the setbacks, the experts have suggested a solution, and that is, if these weapons are found anywhere, they must be brought back into the framework of the Convention's verification regime,³ with OPCW overseeing the procedure. Thus, the author in the chapter enunciates the applicability of the convention to address SDCWs.

EVOLUTION OF THE UNITED NATIONS CONVENTION ON THE LAW OF THE SEA

The chapter discusses the evolution of the United Nations Convention on the Law of the Sea (UNCLOS) and the examination of UNCLOS III as an essential international legal framework for marine environmental protection, focusing on its potential application to Sea-Dumped Chemical Weapons (SDCWs). It enunciates the role of UNCLOS in providing a framework for regulating marine pollution and protecting marine ecosystems. The chapter cites certain articles of the convention regulating pollution by dumping.

For example, Article 235 of UNCLOS ensures the availability of recourse in the state's legal system for adequate compensation for damages caused by pollution to the marine environment.⁴ The author points out that though UNCLOS didn't explicitly address SDCWs,

³ *Ibid*

⁴ United Nations Convention on the Law of the Sea 1982, art 235

Article 237 still obligates a State to adhere to marine protection norms in other international agreements for the remediation of SDCWs. Then, the chapter dwells on the legal interrelationship between the Chemical Weapons Convention and UNCLOS and highlights various dissonances, particularly the exemption for SDCWs before 1985 in the CWC. While providing a comprehensive legal analysis, the chapter points out gaps in enforcement mechanisms and the need for greater harmonisation between UNCLOS and the CWC. Overall, it stresses the importance of state cooperation to address the problem of SDCWs. The detailed analysis and explanation of concerned provisions as to the marine environment are commendable, which gives the reader a full-fledged comprehension of UNCLOS concerning the protection of the marine environment and the applicability of other agreements to hold state liability for the cleanup of SDCWs.

OTHER LEGAL FRAMEWORKS BEYOND THE CHEMICAL WEAPONS CONVENTION (CWC) AND UNCLOS

This chapter covers the London Convention and the Basel Convention, which focus on preventing prospective marine pollution and the movement and disposal of hazardous and other wastes, respectively, but their applicability to retrospective SDCWs is limited. Further, the chapter discusses regional agreements such as the OSPAR, Cartagena, and Barcelona Conventions, which obligate States to undertake SDCWs remediation activities, but they are region-specific and lack global authority. Therefore, the author emphasises that these regional agreements have to be stricter than the global convention or at least at the same level as those.

BRIDGING THE GAPS

The chapter discusses the lacunas and the need for amendments in existing international laws, specifically the UNCLOS and CWC, to address the issue of SDCWs. The author emphasises the importance of legal protocols, customary international law, and state responsibility to tackle this issue. The first part of the chapter explores the process of amending treaties, referring to the Vienna Convention's provisions. The author emphasises the possibility of amending the CWC to remove the exemptions and mandate the declaration and destruction of chemical weapons

dumped in the ocean without temporal restrictions on this duty. The chapter outlines the amendment process in CWC.

However, the ability to veto amendments presents challenges to effective action. The second part examines possible amendments to UNCLOS and underscores the importance of political will for amending international treaties; the chapter stresses that the lack of such will often hamper progress. The discussion also includes the role of protocols in both conventions, proposing them as remediation tools for SDCWs, and notes that even non-parties to the conventions could participate voluntarily. The author critiques state practices and OPCW's decisions, highlighting the absence of legally binding mechanisms for SDCW's cleanup. The chapter concludes with an exploration of customary international law, focusing on four key principles: prevention, precaution, cooperation, and common but differentiated responsibilities (CBDR-RC). Despite the discussion of legal remedies, the author underlines that the real challenge lies in the political will of states to implement these proposed solutions.

STATE LIABILITY

The chapter highlights the responsibility of the States to protect and preserve the marine environment and thus calls for measures to remediate SDCWs. But the question discussed here is whether the states could be held liable if they fail to perform their responsibility. Therefore, this chapter dwells on the law relevant to the question of possible state liability to SDCWs. For example, Article 15 of the London Convention.⁵ Also, this chapter cites jurisprudential pronouncements obligating States to make reparation for any breach.

The second part deals with the application of the intertemporal rule, focusing on a progressive approach by applying new environmental standards to hold States liable. However, based on various scholars' opinions and the lack of records as to the causality issue, it is just to impose a legal obligation on both states (dumping states and coastal states). The author also points out that it is unrealistic to expect a state to devise a system whereby they are subjected to significant

⁵ London Convention 1972, art 15

amounts of legal liability, and thus advocates that States could tackle the problem of SDCWs on a voluntary and cooperative basis.

CONCLUSION

The conclusion chapter synthesises the core arguments and findings of the book, emphasising the urgency of addressing Sea-Dumped Chemical Weapons (SDCWs) through enhanced legal frameworks and international cooperation. It highlights the gaps in existing treaties and underscores the shared global responsibility for remediating the environmental legacy of chemical weapons dumping. The author stresses that the issue of SDCWs, due to its transboundary nature, is a prime example of a global problem that cannot and should not be approached from the perspective of legal constructs of sovereignty that no longer have validity in the modern world.

Provided that the technology and resources can be mobilised, the problem of SDCWs is a finite one with finite solutions (unlike, perhaps, climate change). To facilitate research, cooperation, and funding for the ongoing scientific activities to deal with SDCWs, an international organisation could serve as a coordinating agency for programs in this area.⁶ The conclusion reiterates the importance of addressing SDCWs as a moral obligation to future generations. It calls for immediate action to rectify the environmental harm caused by past decisions and urges states to work collaboratively to restore the health of the oceans.

ANALYSIS

The chapterisation and an elaborate introduction to each chapter convey to the reader what they are going to get to know. This book shall be used by anyone from any profession who is interested in international, maritime, and environmental laws. At the beginning of every chapter, the author gives an elaborate explanation of every concept that will be dealt with in the chapter. For example, to discuss the application of customary international law, the author explains what a custom (general practice) is under international law and mentions its relevant laws. The author's work is commendable, as he has addressed the crucial issue and examined

⁶ Dawson (n 1)

the legal regimes available for the same and, in doing so, found the lacunae and suggested ways to make the state remediate SDCWs. The author has given a practical suggestion by emphasising that remediation of SDCWs can be done through collaborative measures taken by the States. Overall, the book emphasises the remediation of SDCWs to prevent further harm and restore the marine environment.