of law.[27] But contemporary legal scholars have written little about peace. *The Puzzle of Peace* rightly asks the question: why are scholars, including those in the field of international law, so fascinated with the study of war and its absence but generally uninterested in the study of peace? For those that would resist this viewpoint, they only need look at the dearth of international legal scholarship in recent decades that directly analyzes peace and its promotion. Perhaps this is because, in part, legal scholars face the very challenge this book addresses—namely, the absence of a common conceptualization of what peace is and how it should be studied. In this way, the book provides a valuable tool for the few international legal scholars currently engaging in, and those willing to consider, the important questions about the role law should play in promoting peace in the future.[28]

The rich descriptive content, important methodological roadmap, original data, and apt critique make *The Puzzle of Peace* a new classic in the study of international peace and security. As such, it should be considered required reading for the community of international legal scholars and practitioners. It reanimates the need for law to engage with peace and provides tools for doing so. It captures the conceptual framework for understanding the importance of international norms, and with them, international law in the pursuance of international peace. Most importantly, it reanimates an essential insight familiar to past generations, but now largely forgotten: "Peace is a *relationship*, while war is an *event*" (p. 4, emphasis in original).

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International Environmental Law and Governance examines a hitherto underexplored, yet increasingly important, area of international environment law—the role of Conferences of Parties (COPs) in the governance of environmental treaties.[1] While international human rights treaties have established "committees," which are

[27] JOHAN GALTUNG, PEACE BY PEACEFUL MEANS: PEACE AND CONFLICT, DEVELOPMENT AND CIVILIZATION 2 (1996) (explaining the concept of positive peace, a concept that Galtung is credited for introducing); *see also* JOHN PAUL LEDERACH, BUILDING PEACE: SUSTAINABLE RECONCILIATION IN DIVIDED SOCIETIES (1997); DIETER SENGHASS, ON PERPETUAL PEACE: A TIMELY ASSESSMENT 33–42 (Ewald Osers trans., 2007); Oliver P. Richmond, *Critical Research Agendas for Peace: The Missing Link in the Study of International Relations*, 32 ALTERNATIVES: GLOB., LOC., POL. 247 (2007); Herman Schmid, *Peace Research and Politics*, 3 J. PEACE RES. 217 (1968); Berenice A. Carroll, *Peace Research: The Cult of Power,* 16 J. CONFLICT RESOL. 585 (1972); Herbert G. Reid & Ernest J. Yanarella, *Toward a Critical Theory of Peace Research in the United States: The Search for an "Intelligible Core,"* 13 J. PEACE RES. 315 (1976); Heikki Patomäki, *The Challenge of Critical Theories: Peace Research at the Start of the New Century*, 38 J. PEACE RES. 723 (2001); Matti Jutila, Samu Pehkonen & Tarja Väyrynen, *Resuscitating a Discipline: An Agenda for Critical Peace Research*, 36 MILLENNIUM: J. INT'L STUD. 623 (2008).

[28] PROMOTING PEACE THROUGH INTERNATIONAL LAW (Cecilia Marcela Bailliet & Kjetil Mujezinović Larsen eds., 2015); Diane Marie Amann, *International Law and the Future of Peace*, 107 ASIL PROC. 111 (2014); Mary Ellen O'Connell, *Responsibility to Peace: A Critique of R2P, in* CRITICAL PERSPECTIVES ON THE RESPONSIBILITY TO PROTECT: INTERROGATING THEORY AND PRACTICE 71, 71 (Philip Cunliffe ed., 2011); CHRISTINE BELL, ON THE LAW OF PEACE: PEACE AGREEMENTS AND THE *LEX PACIFICATORIA* (2008) (offering a groundbreaking work on the systematic study of the law pertaining to peace agreements). For critical works, see Hilary Charlesworth, *Are Women Peaceful? Reflections on the Role of Women in Peace-Building*, 16 FEM. LEG. STUD. 347, 357 (2008) (challenging "[t]he idea that women are somehow predisposed to be peaceful and naturally gifted as peace-builders . . ."); Danilo Zolo, *Hans Kelsen: International Peace Through International Law*, 9 EUR. J. INT'L L. 306, 323 (1998) (critiquing Kelsen's tenants of international peace).

[1] Some scholars have examined this issue. *See, e.g.*, Annecoos Wiersema, *The New International Law-Makers? Conferences of the Parties to Multilateral Environmental Agreements*, 31 MICH. J. INT'L L. 231 (2009); Jutta Brunnée, *COPing with Consent: Law-Making Under Multilateral Environmental Agreements*, 15 LEIDEN J. INT'L L. 1 (2002).

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together called "treaty bodies,"[2] international environmental law treaties have opted for the novel tool called Conference of Parties. This rather recent phenomenon of establishing COPs as a governance mechanism for ensuring, *inter alia*, that parties fulfill their obligations is a fascinating development in international environmental law and has implications beyond the multilateral environmental treaties (MEAs) that establish them. These COPs execute various functions, ranging from ensuring compliance with treaty obligations,[3] to deciding "penalties" for noncompliance, and determining the future direction of the obligations of parties. They do not fall into the category of international organizations, but have come to play an important role in international law, and they raise interesting questions about how international obligations and compliance mechanisms are created and, most importantly, whether the decisions of COPs are binding on the parties to the treaty.

The editors of the volume, Professors Malgosia Fitzmaurice and Duncan French, are highly respected scholars in the field of international environmental law. Fitzmaurice is Professor of Public International Law at Queen Mary University of London and French is the Head of the Law School at the University of Lincoln. Both have published extensively in the field. The edited volume contains an introduction by the editors, five chapters written by scholars in the field, and an index. Each chapter consists of an updated version of an article that was originally published in the *International Community Law Review*, which arose out of a workshop organized by the editors and held at Queen Mary University of London in 2011. While each chapter contains extensive footnotes, the readers would have benefited from a bibliography, particularly since this is an underexplored area of international law.

As the editors note, the focus of the discussion is on the powers of COPs, "an issue which has been puzzling international lawyers," particularly since the establishment of compliance regimes under MEAs (p.1). Several important questions are examined by the contributors: why states comply with the decisions of COPs; the powers of COPs from the international law and law of treaties perspectives; fragmentation of international law; and ultimately, the legitimacy of international law.

The first chapter, written by Michael Bowman, a professor at the University of Nottingham School of Law, examines the ecology of institutional governance in conservation treaty regimes. He argues that the effectiveness of these treaty regimes depends heavily on the extent to which they are informed by scientific understanding of principles that govern the operation of biological systems and natural processes, particularly the "ecosystem approach." He further argues that principles that determine the stability and productivity of these biological systems must be taken into consideration when devising institutional arrangements for the treaty regimes in question. He points to the need to have the widest possible participation of various stakeholders, given the global and wide-ranging ambit of many environmental problems. Critical components of an institutional regime necessary to connect the individual nodes (states parties themselves) are identified as: a plenary political organ; a permanent bureaucracy; a bridging mechanism between the occasional policymaking determinations of the plenary body and the routine day-to-day functions of the secretariat; and a mechanism for scientific input. In addition, there may be other subsidiary organs with specialized functions or *ad hoc* working groups created to address specific issues or concerns which may, over time, become transformed into a semipermanent feature.

Bowman stresses the need to take into account the relevant international legal rules, in addition to the provisions in the treaty itself, if gradual fragmentation of international law is to be avoided and the enhancement of "systemic integrity" across the global legal order as a whole is to

[2] Currently, there are ten treaty bodies, details are available here: http://www.ohchr.org/EN/HRBodies/Pages/TreatyBodies.aspx. *See also* Kerstin Mechlem, *Treaty Bodies and the Interpretation of Human Rights*, 42 Vand. J. Transnat'l L. 905 (2009).

[3] *See* Promoting Compliance in an Evolving Climate Regime (Jutta Brunnée, Meinhard Doelle & Lavanya Rajamani eds., 2012).

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be achieved (p. 48). Having a mere institutional structure is insufficient to ensure effective integration and coherence within the system. Bowman points out that "the establishment of an additional tier of cooperative institutional arrangements, designed to span the divide between individual treaty regimes and, indeed, entire substantive sectors of treaty-based activity," is necessary to acheive effective integration and coherence within the system (p. 49). However, these innovative institutional structures alone cannot transcend the political divides (most prominently the North-South divide) in the international community, as the negotiations relating to climate change have repeatedly shown. This requires a more detailed analysis than can be possible in this volume, but the chapter seems to have glossed over this reality.

The second chapter, by Edward J. Goodwin, a professor at the University of Nottingham, provides a fascinating insight into delegate preparation and participation in COPs to environmental treaties. Goodwin uses the United Kingdom's preparation for the Ramsar Convention on Wetlands COPs as a case study. Given, however, that there is an additional layer of coordination that is required at the EU level and because the United Kingdom, as a country in the global North, has sufficient resources to invest in their delegations, discussion of another case study to demonstrate how developing countries participate in COPs would have been particularly insightful. The author is sensitive to these issues, however, and notes several concerns regarding delegation participation, including the fact that: many countries in the global South are unable to send large delegations; COP host countries often have large delegations present; and some countries—such as France, Japan, the Republic of Korea, the United States, China, and Malaysia—habitually send "super delegations," which are comprised of ten or more delegates.

One of the major obstacles to effective participation by developing countries in these fora is limited resources and manpower to send delegations to the various COP meetings all over the world. Many developing countries usually have a small delegation that attend all COPs, irrespective of the subject matter. This raises questions relating to effective participation in COP meetings and the ability to influence decisions, particularly on issues relating to highly technical matters.[4] This concern has been recognized by the author, but requires further analysis—particularly regarding the question of why developing nations form voting blocs or coalitions for negotiations.[5] Another issue is whether civil society groups are included in government delegations, or at least consulted before COP meetings. A final issue that requires further investigation is that certain delegates, particularly those from developing countries with small delegations, have raised concerns regarding reporting fatigue and participation fatigue because it is difficult for smaller delegations to participate fully in the multitude of meetings.

The third chapter, written by Peter G.G. Davies, a professor at the University of Nottingham School of Law, is titled "Non-compliance – A Pivotal or Secondary Function of COP Governance?" It seeks to assess to what extent COPs of MEAs have played a role in the establishment and operation of compliance systems, which are becoming a central feature of many MEAs. Several issues are identified for discussion: clarifying compliance and interpreting primary rules; monitoring and verification; national reports; facilitating compliance, capacity building and funding; establishing and developing noncompliance procedures and mechanisms without an express treaty basis; and determining the consequences of noncompliance. The author argues that because COPs are political bodies, they are in a unique position to provide clarification regarding ambiguities in the treaty text,

[4] *See* Lalanath de Silva, *Public Participation in International Negotiation and Compliance*, *in* INTERNATIONAL ENVIRONMENTAL LAW AND THE GLOBAL SOUTH 572 (Shawkat Alam, Sumudu Atapattu, Carmen G. Gonzalez & Jona Razzaque eds., 2015).

[5] *See* Sumudu Atapattu & Carmen G. Gonzalez, *The North-South Divide in International Environmental Law: Framing the Issues*, *in* INTERNATIONAL ENVIRONMENTAL LAW AND THE GLOBAL SOUTH, *supra* note 4, at 1–12.

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thereby playing a pivotal role in improving the effectiveness of the treaty regime. For instance, these plenary bodies have improved the regularity of reporting and the content of national reports by adopting guidelines and recommendations. Further, they have established capacity building and funding opportunities. They have also developed compliance systems in the absence of an explicit legal basis for them and retain the ultimate authority to make decisions regarding the consequences of noncompliance, whether or not formal noncompliance procedures have been established under the treaty. Given the increasing sophistication of treaty regimes, the author notes that the plenary bodies will need guidance from other specialized bodies in this regard. However, while they have been at the forefront of establishing compliance systems, they play a more secondary role in their practical application.

The fourth chapter, by Feja Lesniewska, a senior teaching fellow at SOAS London, discusses the United Nations Framework Convention on Climate Change (UNFCCC) COPs. She examines whether COP activities can have a law-making effect beyond a regime by proxy without there being any formal legal mechanism that has been agreed to by the parties. The author does this in the context of decisions related to the reduction of emissions from deforestation and forest degradation (REDD+). REDD+ originated from the 2007 UNFCCC COP, which adopted the Bali Roadmap that included a decision to negotiate options for a mechanism to reduce such emissions. The Global South pushed for its adoption which, ironically, opposed its inclusion in the UNFCCC, fearing "internationalization" of their forests.[6]

The author points out that assumptions about the influence of these decisions is based upon the belief that "treaty-based activities, such as conference of the parties . . . decisions, have normative, substantive and procedural effects on how law and policy evolves" (p. 117). U.S. courts have held that COP decisions are not binding,[7] and Article 38(1) of the International Court of Justice (ICJ) Statute does not reference these decisions because it predates the significant growth in MEAs with COPs as the plenary mechanism. However, we cannot simply dismiss COP decisions as nonbinding. Labeling them as soft law is unhelpful, as the decisions by the plenary body established under a treaty that has wide (and occasionally near-universal) participation certainly carry more weight than a document adopted by a private organization, such as the International Law Association.

These plenary bodies contribute to the development and shaping of international obligations within the treaty regime and, collectively, this may signal the emergence of a new form of law-making not envisaged by the framers of the ICJ Statute or the Vienna Convention on the Law of Treaties. According to the latter, "[a]ny relevant rules of international law applicable in the relations between the parties"[8] should be taken into account when interpreting the treaty (p. 118). Opinions differ as to whether COP decisions fall within this definition, but the consensus seems to be that COP decisions, by their nature, are not binding under international law.[9] However, as Jutta Brunnée points out, given that they are more flexible and informal, they can often facilitate innovative ways to create norms.[10] Further, they have given rise to a flurry of activity at the international level, as the UNFCCC experience has shown us, such as: the establishment of global funds;[11] the Warsaw International Mechanism for Loss and

[6] DAVID HUNTER, JAMES SALZMAN & DURWOOD ZAELKE, INTERNATIONAL ENVIRONMENTAL LAW AND POLICY 669 (5th ed. 2015).

[7] NRDC v. EPA, 464 F.3d 1, 10 (D.C. Cir. 2006), *quoted in* CAN Ad-Hoc Legal Working Group, *COP Decisions: Binding or Not*, CLIMATE ACTION NETWORK INT'L (June 8, 2009), *at* http://www.climatenetwork.org/sites/default/files/COP_Decisions_CAN_legal_group_June_8_09.pdf.

[8] Vienna Convention on Law of Treaties, Art. 31(3)(c), May 23, 1969, 1555 UNTS 331.

[9] *Supra* note 1.

[10] Brunnée, *supra* note 1.

[11] Several funds have been established under the UNFCCC—the adaptation fund, the least developed country fund, and green climate fund are examples. *See* UNFCCC, List of Recent Climate Funding Announcements, *at* http://newsroom.unfccc.int/financial-flows/list-of-recent-climate-funding-announcements.

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Damage;[12] the establishment of the women and gender constituency[13] under the UNFCCC; and the REDD+ program.[14]

This chapter also examines the synergies between two related treaties in the context of REDD+, UNFCCC, and the Kyoto Protocol, on the one hand, and the Convention on Biological Diversity (CBD), on the other. While COP9 of the UNFCCC called on parties to ensure that REDD+ activities are consistent with objectives of the CBD, COP10 of the CBD requested the CBD Secretariat to convey a proposal to develop joint activities between the Rio Conventions (UNFCCC, CBD, and the Desertification Convention). These synergies (and conflicts) are most apparent in relation to the REDD program. At COP16, the parties to the UNFCCC agreed to take account of and respect relevant international obligations, national circumstances, and laws when undertaking REDD+ activities. The author concludes that: "Although formally the UNFCCC REDD+ mechanism has no legal force, it has clearly infiltrated both international and national forest law-making processes" (p. 141). However, the author then asserts that the UNFCCC REDD+ mechanism is a valuable example of COPs as law-makers and that it has achieved this through a flexible, iterative process, but cautions that international forest law should not be hijacked by certain substantive and procedural elements within the REDD+ mechanism. She reminds that: "The UNFCCC COP also illustrates the need for mechanisms to ensure equitable, fair and transparent participation in these new law-making processes to realize legitimate outcomes" (p. 142).

The final chapter, by Philippe Cullet, a professor at SOAS University of London, discusses how the governance of the water regime has emerged in the *absence* of a COP. The author questions whether this has given more flexibility for the parties to adopt a governance mechanism that suits the regime. He suggests that the emergence of COPs and other governance mechanisms, including the important role played by soft law instruments, both in relation to developing commitments, standards, and governance mechanisms, could be due to the rather weak role that the United Nations Environment Programme (UNEP) plays in relation to environmental stewardship. This is a very intriguing point and needs further investigation and analysis. There could be other reasons for this development, including the need to have a specialized body to address the subject matter governed by the treaty in question, such as those we currently have under the treaties governing climate change, ozone depletion, and biological diversity. Having one international organization without such specialized knowledge providing the functions that the COP mechanism provides may be unhelpful given how complex these environmental issues have become.

According to Cullet, two institutions have shaped international water policy—the World Water Forum, which is organized by the World Water Council and takes place every three years; the Global Water Partnership (GWP), which was created by the World Bank, United Nations Development Programme, and Swedish International Development Agency. The former brings together the private sector, nongovernmental actors, and elected officials, including ministers. While it is not an intergovernmental meeting, its outcomes, such as ministerial declarations, have acquired a state-sanctioned legitimacy because of the presence of ministers. The latter arrangement was formalized in 2002 with the establishment of the GWP Organization, whose mandate is to support the GWP Network. The author points out that an important aspect of the emerging international water policy model is that it blends different actors together without formally acknowledging it. A key problem of this new governance model that he identifies is

[12] The Warsaw International Mechanism for Loss and Damage was adopted at COP19 and was incorporated into the Paris Agreement in 2015. *See* UNFCCC, Warsaw International Mechanism for Loss and Damage Associated with Climate Change Impacts, *at* http://unfccc.int/adaptation/workstreams/loss_and_-damage/items/8134.php.

[13] Women and Gender Constituency was launched in 2009 and the Lima Work Program on Gender was launched at COP20 in Lima. *See* SUMUDU ATAPATTU, HUMAN RIGHTS APPROACHES TO CLIMATE CHANGE: CHALLENGES AND OPPORTUNITIES ch. 8 (2015).

[14] *Id.*, ch. 7.

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the possibility that the interests of the weakest states might be ignored. Moreover, it is puzzling as to why many countries of the Global South are striving to implement the commitments embodied in these instruments because they are nonbinding and typically there are no legal consequences attached to noncompliance.

Of course, as the editors themselves point out, this collection of essays only scratches the surface of this increasingly important area of the role played by COPs as a governance mechanism under MEAs, what this means for international law, and how obligations are created, monitored, and refined. It provides a rich, fertile ground for further research as states are clearly opting for softer and more novel forms of law-making and enforcement.

One important issue that needs further study is the relationship between international institutions and COPs and their impact on international law-making. Just like states have devised novel ways of creating international obligations, they have also devised innovative ways to monitor compliance and address issues of noncompliance. Another issue that needs closer scrutiny is the proliferation of COPs and their relationship to one another. Would the commitments adopted by the COPs under one treaty have any bearing on those adopted under another treaty in cases where there is overlap in subject matter? How do we ensure coherence and avoid conflict? The REDD+ mechanism, discussed above, provides a good example of the need to ensure coherence and harmonization among commitments governed by different MEAs.

Other issues that require further analysis include:

- Cross-fertilization of COP functions and implications for other treaties.
- The North-South dimension of participation in MEAs,[15] and COP meetings in particular.
- The role of nongovernmental organizations in shaping COP decisions.
- Given the complexity of issues like climate change, can the functions of COPs be generalized?
- Given that more and more MEAs are establishing COPs as the plenary body in charge of various functions, is there reporting fatigue and participation fatigue, particularly on the part of developing countries who lack resources and expertise to participate meaningfully in these meetings?
- To what extent have COPs gone beyond the original mandate given to them under the treaty in question and what does this mean for legitimacy of international law?
- What does the proliferation of COPs and meetings of parties (MOPs) mean for environmental governance with regard to overlapping functions, coordination, and use of limited resources?
- Whether, as Cullet points out, we would have seen a proliferation of COPs/MOPs if UNEP had stronger powers and more resources?
- What does the proliferation of these various governance mechanisms mean for the fragmentation of international law?[16]

Of course, a discussion of all these issues in a systematic manner will require several volumes. This collection of essays provides an excellent foundation to start the conversation on these larger issues in a coherent manner.

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[15] *See* de Silva, *supra* note 4.

[16] *See* Int'l Law Comm'n, Fragmentation of International Law: Difficulties Arising from the Diversification and Expansion of International Law, UN Doc. A/CN.4/L.682 (Apr. 13, 2006), *at* http://legal.un.org/ilc/documentation/english/a_cn4_l682.pdf.

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