

## BOOK REVIEWS

*The Art and Craft of International Environmental Law*, by Daniel Bodansky  
Harvard University Press, 2010/11, 359 pp, \$23.95 pb, \$43.50 hb, ISBN 9780674061798 pb,  
9780674035430 hb

Transnational law encompasses more than public international law, but the latter remains at the heart of transnational law. International law structures portions of transnational law by allocating decision-making authority among sovereigns. Although environmental law is relatively new as a field of international law, it encompasses a multitude of treaties and international institutions, covering diverse matters from climate change to fishing to hazardous waste disposal. For those who come to transnational law from other backgrounds, a concise and balanced introduction to international environmental law is therefore invaluable.

The jacket comments on Bodansky's *The Art and Craft of International Environmental Law* describe it as a 'clear and compelling overview', 'accessible yet sophisticated', and a 'crisp, clear and compelling narrative'. This is one of the rare cases in which these endorsements are more accurate than hyperbolic. The book actually does provide a coherent and clear introduction to the sometimes arcane world of international environmental law. It is enriched by a hybrid of doctrinal information, political science perspectives and practical experience. Although specialists may find little that is unfamiliar, they too will benefit from such a clear synthesis of the material. Unlike much writing on the subject, the book neither romanticizes the effectiveness of international (environmental) law nor cynically dismisses it.

The first half of the book explains the background against which international environmental law operates. It lays out the policy considerations behind efforts to deploy international environmental law, most notably the tragedy of the commons. It also works through the varieties of environmental norms and tries to explain which ones, in a world lacking strong international enforcement mechanisms, should be considered distinctively 'legal'. Finally, it goes through the roster of key players, describing the roles of nations, international organizations, and non-governmental organizations (NGOs) in detail.

The second half of the book is more ambitious. It first addresses how cooperative solutions can emerge. Chapter 7 considers how obstacles to international cooperation are overcome. It argues that ideas matter as well as interests. Increased scientific knowledge may pave the way for agreement about the nature of problems and their solutions. International agreements can reduce the cost of cooperation, raise costs to non-cooperators and enhance state capacity to respond to problems. Chapter 8 then dives into the negotiating process and asks why states negotiate international agreements. Bodansky considers the possible trade-offs between broad agreements with many parties and deep agreements with sharply defined commitments. A key question

is cost allocation, where Bodansky points towards a norm (at least in water pollution cases) of allocating the cost of abatement based inversely on relative wealth. He then considers, in depth, the design issues confronting negotiators and strategies for building a treaty regime over time.

Chapter 9 turns to the issue of customary norms. Bodansky's brisk treatment of the subject may be off-putting for enthusiasts of customary international law. He is critical of the classical test for customary law based on consistent state practice backed by a sense of legal obligation. He is sceptical that state practice is actually consistent enough to provide a basis for norms. Instead, Bodansky sees what is called customary international law as an effort to articulate general background principles that have little direct effect but may help to frame negotiations. These norms, Bodansky says, 'serve to frame the debate rather than to govern conduct'.

Chapters 10, 11 and 12 address the key issue: Does international environmental law really matter? Or is it simply window-dressing that allows states to continue doing whatever they want to the environment? Chapter 10 begins the analysis by examining how states implement their commitments. As Bodansky points out, 'implementation is not an easy task, even for a government such as the United States, with considerable administrative resources at its disposal' (p. 209). Chapter 10 also examines the motives for implementation, including a predisposition to undertake the same actions anyway, a desire for reciprocal action from other states, or internal pressure from various domestic actors such as NGOs.

Some lawyers resist even the term 'international law', wondering how a system with no effective enforcement mechanism can be considered 'law'. Chapter 11 argues, however, that external enforcement plays a relatively small role in compliance with treaties. Instead, enforcement tends to focus on facilitative efforts such as providing more clarity about obligations or even resources to assist states in implementation. Thus, Bodansky finds more merit in a managerial model of compliance, in which outsiders attempt to facilitate compliance, rather than the more coercive enforcement model. He views international environmental law as 'a fundamentally political process of balancing competing interests', lending itself to a 'political, pragmatic approach' to non-compliance (p. 251).

The ultimate goal of international environmental law should be environmental protection, not the negotiation of treaties or even compliance with their provisions. Chapter 12 addresses the central question of the real world effects of international environmental law. Bodansky candidly admits that the empirical evidence on this point is limited. Case studies do seem to show, however, that in some cases international environmental law 'has had impressive results' for which Bodansky cites, among others, the agreements relating to dumping in the North Sea, pollution by ships, seal hunting, and protection of the ozone layer (p. 259). Other examples are less sanguine, most notably the limited success of international law in the arena of climate change. The book concludes with some general observations, stressing the need for pragmatism and flexibility given our lack of firm knowledge about the dynamics of negotiation and effectiveness.

Public international law is a polarized field of scholarship, at least in the United States (US). Realists rooted in the field of international relations question whether

public international law is anything more than a hypocritical pretence at legality in a world dominated by sheer power.<sup>1</sup> Public international law traditionalists deplore the realist position as a threat to the emergence of international order. They insist that public international law is followed by nearly all states nearly all of the time.<sup>2</sup> Bodansky's efforts to find a middle ground will probably leave both sides unsatisfied.

*The Art and Craft of International Environmental Law* should provide readers with a better sense of the place of international environmental law within the broader field of transnational environmental law. Bodansky makes a convincing case that international agreements can play a constructive role in addressing global environmental issues. At the same time, he leaves no doubt about the limitations of such agreements. This makes it all the more important to continue to expand other forms of transnational law, such as activities by subnational governmental entities, NGOs, and the business sector. As Bodansky makes clear, climate change is a particularly knotty problem for international environmental law. To find an adequate solution we will need either creative responses from other elements of transnational law or a quantum leap in strengthening international law.

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*European Environmental Law: After Lisbon*, 4<sup>th</sup> edn., by Jan H. Jans & Hans H.B. Vedder  
Europa Law Publishing, 2012, 570 pp, €52 pb, €110 hb, ISBN 9789089521064 pb, 9789089521057 hb

The fourth edition of this popular textbook by Jan Jans and Hans Vedder provides a useful overview of recent developments in European Union (EU) environmental law. It is also among the first textbooks to incorporate changes introduced by the Treaty of Lisbon.<sup>3</sup> In general, the book combines a well-organized systematization of major EU environmental instruments with comprehensive analysis of the relevant case law.

Following a structure similar to the previous edition, the first seven chapters are dedicated to EU law in general. The authors start with an interesting analysis of the status of the environmental integration principle in the post-Lisbon era. The environmental integration principle is now complemented by an integration principle

<sup>1</sup> J. Goldsmith & E. Posner, *The Limits of International Law* (Oxford University Press, 2005).

<sup>2</sup> A. Chayes & A. Handle Chayes, *The New Sovereignty: Compliance with International Regulatory Agreements* (Harvard University Press, 1995).

<sup>3</sup> Cf. L. Krämer, *EU Environmental Law*, 7<sup>th</sup> edn (Sweet & Maxwell, 2012), which also offers an apt codification with a similar approach.