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Part 5: Book Reviews

The Oxford Handbook of International Environmental Law, Lavanya Rajamani & Jacqueline Peel (Eds.), Oxford University Press (2021), 1130p.

Marion Lemoine-Schonne¹

Multiple impacts of climate change, vanishing biodiversity, increasing freshwater scarcity and severe degradation of marine resources and oceans ecosystems: faced with the unprecedented aggravation of global threats to the environment, the effectiveness of International Environmental Law (IEL) is very modest. However, its development is considerable on a normative and institutional level, with a strong political maturity, among public and private actors, and an awareness of the ecological urgency among the populations which should favor the effectiveness of the norms.

Does IEL fit for the purpose?

To answer this question, the 2nd edition of the Oxford Handbook of International Environmental Law offers a remarkable panorama of analyses "providing durable analysis to assist reader in navigating and reflecting on the field", as was the ambition of the editors, Lavanya Rajamani and Jacqueline Peel, pioneering international law scholars and practitioners/advisors in the service of the environmental cause. In 2007, the first edition of this book, edited by Daniel Bodansky, Jutta Brunée and Ellen Hey, mapped this relatively new field. More than a decade later, the subject matter has expanded considerably, "IEL has acquired further breadth, depth, nuance, complexity, and reach in the last decade" (Rajamani & Peel, p. 2). In a context of profoundly altered international relations (China's role in multilateralism, growing inequalities, difficult convergence of European Union member states, Chapter 37 by S. Maljean-Dubois), the second edition captures the rapid changes and ongoing maturing that characterize the field and provides keys to understanding the strengths and weaknesses of the field, due to causes intrinsic to the subject (Chapter 18 Precaution by J. Peel, Chapter 21 Public participation by J. Ebbeson, Chapter non-compliance mechanism) and to extrinsic causes (non-environmental regimes, Chapter 15 The Role of Science S. Johnston / Chapter 41 Business and Industry by B. Richardson & B. Sjaafjell for ex.).

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This monumental work provides a dynamic and synthetic understanding of a subject whose content is very vast, marked by a continuous expansion of the legal toolkit (less new treaties but wider range of regulatory non-binding standards setting instruments, including market based one), innovative implementation strategies and litigation advances to be read on an interscalar level (Part IX).

Among the strong trends, we observe a public-private decompartmentalization, a transnationalization by coalitions of multiple actors, the possibility of experimenting with promising conceptual tools (due diligence), procedural turn as illustrated by the Paris Agreement, which replaces the more classic setting standards in IL, to face (addressing) a complex, polycentric issue, and the lack of political will. IEL has to take up the double challenge of effectiveness and of advancing environmental concerns in concert (climate/biodiversity together, or concept of planetary boundaries for example). The greater deference to national sovereignty, circumstances and capacities is also identified as a new trend of the paradigm shift of IL.

A mature law, a laboratory for innovative implementation strategies

By orchestrating the analyses of 75 authors gathered in 9 parts and 67 chapters, L. Rajamani and J. Peel explore the substance of this mature law that has become pragmatic, on the form Multilateral Environmental Treaty-Making by D. Bodansky, Soft law by A. Boyle, and on the substance (Harm Prevention by J. Brunnée, Good Faith, Differentiation, etc.), as well as on the "subject matter", 7 chapters including aviation and maritime transport.

The book describes the consolidation of the institutional and normative architecture and the development of mechanisms to promote implementation through new models of soft law, often more effective than hard law, procedural strategies of implementation (compliance, non-compliance procedures, transparency procedures, national implementation, financial assistance, which is more effective than traditional technology assistance, and more promising than the market mechanisms which have shown their capacity but also their limits. The combined reading of Part VIII - compliance, implementation and effectiveness (including Chapter 59 National implementation and Financial Assistance (Chapter 54), technology assistance and transfers (Chapter 55), illustrates that problem solving ability varies significantly among MEAs, legal, political, financial and economic tools and in

the time. The function of the current EIL thus appears facilitative and catalytic (Chapter 29 Rajamani and Werksman), aiming to define common objectives and providing a menu of regulatory options rather than top-down prescriptive (Paris Agreement, Minamata Convention which deliberately does not create substantive obligation of result, but poses common objectives and focus on procedural obligations (access-notification-consultation, environmental impacts assessment, transparency).

Who decide?

Governance research (Chapter 4 Multilevel and Polycentric Governance by J. L. Dunoff, Chapter 5 Fragmentation by M. A. Young) still cannot predict which model is more appropriate for which environmental issue, but the mobilization of international actors and institutions together provides “a complex network of regulations that is neither horizontally nor vertically stratified (assuming clearly defined functional pillars). Instead, the network reflects multiple facets that each aim to regulate human activity with a limited number of elements in place to ensure consistency” (Chapter 36, E. Hey, p. 649).

Epistemological foundations of EIL, a plural field

The book explores in an original way the epistemological foundations of the IEL. The diversity of scientific, political, ethical and legal approaches and discourses are apprehended as sources of its best effectiveness in the years to come. Rather than shaping the way we think about international environmental law for the years to come, this book opens many windows that allow us to decentralize our gaze and understand the very diverse influences and values defended behind the discourses and legal tools adopted: historical perspective of the law (Chapter 3 P. Sand), the relative importance and evolution of the discourses that underlie it (Chapter 2 J. Dryzek) and doctrines (D. French), whose effect is more consequential in the international sphere than in the national sphere (discourses of boundaries, promethean response, problem-solving discourses, sustainability and green radicalism). The plurality of values carried by discourses and norms is reflected in the discussions on feminist approaches, ethical considerations (Chapter 13), Global South Approaches (Chapter 11), Earth Jurisprudence, Indigenous people (Chapter 42), human rights values (Chapter 45 J. Knox), along with science, technology, trade, and intellectual property and the model of development. IEL is no longer only anthropocentric, but also eco-centric. However, the cross-reading of Chapters 10 Economics, 41

Business and Industry and 53 Market Mechanisms by M. Mehling reminds the pivotal role of economic perspectives and actors to the shaping of IEL.

Turns to courts at all levels

The last part of the book, devoted to the role of the IEL in national and regional courts on all continents, illustrates the symbolic significance for populations of having recourse to the law before the courts and the concrete legal advances that they bring. The "turns to courts" is also manifested before the ICJ, the WTO dispute settlement system (renewable energy), the ITLOS, regional human rights courts, investments treaties arbitration (Chapters 27 Judicial development, 58 International Environmental responsibility and Liability and 60 Judicial Development and International EL disputes before International Courts and Tribunals). The main effect is to increase the role of judges in the global public order with respect to environmental protection (C. Voigt). It also reveals the need to articulate the global, regional and national scales as the EIL becomes increasingly mature and will never become self-sufficient.

Methodology

Some chapters are particularly exploratory, for example: Earth Jurisprudence by C. Cullinan, Chapter 26 Private and Quasi-Private Standards by J. Scott or Chapter 52 Transparency Procedure by T. Sparks & A. Peters.

The few diagrams in the book are very pedagogical (p. 3 and p. 288). The repetition of identical chapter structures also allows for easy comparative readings in the International Environmental Law in National/Regional Courts section.

On several occasions, the authors call for the development of methodologies to evaluate the effectiveness of environmental law (in relation to other disciplines or approaches or in a complementary manner, Chapter 57 Effectiveness by S. Andresen) or through empirical studies of the behavior of actors, as experiment work in behavioral economics does.

Will small steps be enough to make the IEL more effective? Through due diligence "states are obliged to adopt all appropriate and adequate means at their disposal to avoid environmental harm to other states and areas beyond national jurisdiction may help to address gaps, not as an obligation of result, but a legal obligation of conduct" C. Voigt p. 1020 Chapter 58. Or is it necessary to go towards much more disruptive proposals? J. Viñuales thus calls for awareness on the part of jurists by explaining the asymmetry that structures current environmental law between the priority given to development and the requirements of sustainability (chapter SD, p. 300), "what we call IEL is (...) the law of externalities (...) we have grown so used to this asymmetry that we no longer see it".

In any case, it would be illusory to simplify the law in the face of such a complex environmental issue, which will certainly continue to develop and call upon many specialists to rely on the book to guide them in their research, their studies or their practice.