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# International Environmental Law as an Art and a Craft

Jae-Hyup Lee\*

## I. Introduction

Professor Bodansky's book provides an accessible, yet comprehensive, overview of international environmental law, a field that has undergone rapid development and has become one of the most important issues of our time. Although there are many treatises and casebooks on this subject, this single source stands out because of its thematic and pragmatic approaches to the problem.

The book starts with an anecdote of the author's conversation with an environmental activist. It triggers critical questions such as what is international law, why does it matter, and how can the law do something about it? In ensuing chapters, the author lays out a realistic, pragmatic overview of the field by synthesizing the range of work in different disciplines on international environmental problems. He does not take a doctrinal approach, but provides a real-world perspective on how international environmental law works.<sup>1</sup>

As a former negotiator of a number of international environmental treaties, many of his assertions are based upon his real-world experiences and insights. This is probably his most important contribution to the existing scholarship. Unlike many other works that focus on the substance of international environmental law itself, he draws our attention to the processes by which international environmental law is developed, implemented, and enforced. His unique approach thus appeals to practitioners in the field.<sup>2</sup> As an international environmental law scholar and a national delegate to various international environmental treaty negotiations, I found that Bodansky's book extremely well-represents what is going on

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1. See DAVID HUNTER, JAMES SALZMAN, DURWOOD ZAELEKE, *INTERNATIONAL ENVIRONMENTAL LAW AND POLICY* (4th ed. 2010), another popular casebook that takes a similar approach, but Bodansky's is more compact and analytical.

2. For a reference, see UNITED NATIONS ENVIRONMENT PROGRAMME, *GUIDE FOR NEGOTIATORS OF MULTILATERAL Environmental Agreements*, available at <http://www.unep.org/DEC/docs/Guide%20for%20Negotiators%20of%20MEAs.pdf>.

in the field. For those who are representing governments in international conferences or for those who are engaging in making laws and policies in the domestic arena, the topics he deals with in the book — international environmental negotiations, treaty design, social norms, policy implementation, and effectiveness — will be especially valuable.

In this review, I would like to illustrate a perspective of a scholar-practitioner in Korea, a country which is a newcomer but is increasingly becoming a bridge nation between the leaders and followers of international environmental diplomacy, as well as between developed and developing nations. Another theme that runs through my analysis is putting the contents of the book in the perspective of what is happening and what will happen in the years to come. The year 2012 is a critical moment in the history of international environmental law. It is when the new grand discourse is being shaped that a pragmatic and outcome-oriented approach can make a critical contribution to international environmental law.

The next chapter discusses the scope of international environmental law as envisaged by the author. The following chapter will look into the recent debates and developments in the international, regional arena. I will then try to position them in a general discussion on the “art” and “craft” of the international environmental lawmaking process.

## II. Renewed Definition of International Environmental Law

International environmental law intersects with international law and environmental law. Both fields have distinctive subjects, methodologies, and historical developments. Indeed, scholars of each field who identify themselves as international environmental law experts conceptualize this intersection differently; generally speaking, international lawyers tend to stress the features of “international law,” whereas environmental lawyers tend to focus more on “environmental law” aspects. These different spectrums of views range from “(environmentally inspired) international law”<sup>3</sup> to “(internationally inspired) environmental law.”<sup>4</sup> Defining international environmental law is inherently difficult. Professor Bodansky nicely illustrates its complexity and unique features into three keywords that constitute the field: “international,” “environmental,” and “law”.

International environmental law has expanded and evolved over the years into International Sustainable Development Law. Professor Bodansky discusses this aspect in Chapter 2. He traces the development of international environmental law starting from a group of nature conservation treaties that evolved into more complex and “congested treaties,”<sup>5</sup> where the concern has been transformed into global commons protection treaties. Modern environmental law began in 1987 with the adoption of the Montreal Protocol, for the protection of atmospheric ozone, and publication of the Brundtland Report, which popularized the concept of sustainable development. Since the United Nations Conference on Sustainable

3. Patricia Birnie, Alan Boyle & Catherine Redgwell, *INTERNATIONAL LAW & THE ENVIRONMENT* (3d ed. 2009).
4. Tseming Yang & Robert V. Percival, *The Emergence of Global Environmental Law*, 36 *ECOLOGICAL L.Q.* 615 (2009).
5. Edith Brown Weiss, *International Environmental Law: Contemporary Issues and the Emergence of a New World Order*, 81 *GEO. L.J.* 675, 697-702 (1993); DANIEL BODANSKY, *THE ART AND CRAFT OF INTERNATIONAL ENVIRONMENTAL LAW* 35 (2010).

Development of 1992, the global approach to a variety of problems arising on domestic and international levels has been understood through the prism of Sustainable Development. The scope of the international environmental movement has changed over the years with each new challenge, and accompanying treaty negotiations, further entrenching the legitimacy of an international framework to address environmental problems.

The concept of sustainable development has become the backbone of many key multilateral environmental treaties and the building block of related areas such as trade, investment, and intellectual property. International environmental law in its formative years is quite different from that of the 21st century. Due to the overarching influence of climate change nowadays, and the related markets created to incentivize climate change mitigation, discourses surrounding international environmental law are indeed vast enough to cover large and interdisciplinary areas. International environmental law is no longer considered as one part of international law, but is at least conceptually consolidating traditional areas of law under the rubric of sustainable development.

Many issues surrounding some key multilateral environmental treaties relate to cross-cutting “non-environmental” issues. In the Convention of Biological Diversity and its Protocol on Biosafety, for instance, intellectual property rights and the trade concerns have created controversy.<sup>6</sup> Trade-related measures have become popular tools to implement the environmental objectives of the treaties.<sup>7</sup> A number of recently concluded Free Trade Agreements contain investor-state dispute (ISD) provisions, where the investor company can directly challenge the environmental policy of the host country in arbitral tribunals.<sup>8</sup> All of these developments illustrate the far-reaching character of modern international environmental law.

Parallel to the developments in international environmental lawmaking, there has been a convergence of domestic environmental laws around the world. Countries model after one another on a variety of policy instruments, to the point where a global environmental law emerges through the collective impact of domestic laws. At this particular juncture, leading nations in the international arena are not always ahead. This is where the advantages of followers kick in. Often, developing countries can learn from mistakes of the developed countries and can take a fast-track in legislating environmental laws and policies. For instance, South Korea has an elaborate body of law and policy relating to “green growth,” a new national development vision to achieve a synergic relationship between the environmental objective and the economic growth objective at the same time. It has more detailed and implemented strategies than most nations.<sup>9</sup> When many nations appropriated

6. This includes issues such as the access and benefit sharing, traditional knowledge, risk assessment and labeling. For a general discussion, see GRAHAM DUTFIELD, *INTELLECTUAL PROPERTY RIGHTS, TRADE AND BIODIVERSITY* (2000); CHRISTOPH BAIL, ROBERT FALKNER & HELEN MARQUARD, *THE CARTAGENA PROTOCOL ON BIOSAFETY* (2002).

7. See generally HALINA WARD AND DUNCAN BRACK, *TRADE, INVESTMENT AND THE ENVIRONMENT* (2000). On the Basel Convention, see JONATHAN KRUEGER, *INTERNATIONAL TRADE AND THE BASEL CONVENTION* (1999). On climate change, see DUNCAN BRACK, MICHAEL GRUBB AND CRAIG WINDRAM, *INTERNATIONAL TRADE AND CLIMATE CHANGE POLICIES* (2000).

8. E.g., Korea-U.S. Free Trade Agreements.

9. See generally John Leitner, *The Expansive Canopy of Korean Green Growth: Key Aspects for Forest Conservation Projects*, 10 J. KOR. L. 171 (2010).

funds for economic stimulus during the global economic downturn in 2008, Korea's spending targeted sectors consistent with the green growth vision, an early step in several years of concerted "green growth" policy-making.

Various domestic legal regimes use methods and policy toolkits, as the author demonstrates in Chapter 4, ranging from command-and-control regulations to market-based approaches, and defining various reporting requirements. Each presents unique strengths and weaknesses, and a growing number of nations mix these instruments in lawmaking.<sup>10</sup> Countries like Korea and China have employed their own WEEE, RoHS, and REECH regulations modeled after the EU.<sup>11</sup> Carbon cap-and-trade schemes are being developed in Korea and Brazil, even though these countries do not have reduction obligations under the Kyoto Protocol. While some of these legal initiatives in the developing countries have been indeed triggered by international environmental law,<sup>12</sup> some of the recent legislations have surpassed the developments in the international arena. In some sense, this could be described as going beyond what is required or even supported by 'consensus' in the international system. This demonstrates that countries' interests cannot be explained in mere economic terms, but can be understood in light of multiple reasons including reputation. Whether cultural values are (in)compatible with international environmental norm-creating is worth investigating.<sup>13</sup> At any rate, "international environmental law" and "domestic environmental law" mutually influence each other and this active dialog may be responsible for creating so-called "International Sustainable Development Law" or "Global Environmental Law."

### III. International Environmental Law in the Making

#### A. *Grand discourse formation*

The congestion of international environmental treaties does not necessarily mean the diminished role of customary norms, as Professor Bodansky aptly points out. A considerable effort has been made to codify core principles of international environmental law, and the author directs our attention to state behavior in a more systematic way.<sup>14</sup> What are often critical in the international arena are more "attitudinal" aspects of state conduct,<sup>15</sup> and Bodansky focuses on these issues in order to frame the discussion. In this regard, nations rely on so-called "soft measures" more often, because states can impose higher aspirational objectives through non-binding measures. Many outcomes of international environmental negotiation can be politically binding, yet legally non-binding, instruments.<sup>16</sup>

10. BODANSKY, *supra* note 5, at 57-74.

11. Dae Young Park, *Haste Makes Waste: Five-Year Review (2005-2010) of RoHS/WEEE Regulation Implementation in China, Japan and Korea*, (Working Paper), available at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1648421](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1648421).

12. For instance, in many developing countries, the Rio Summit in 1992 marked the beginning of the development of environmental law and policy.

13. This issue is somewhat discussed in RODA MUSHKAT, *INTERNATIONAL ENVIRONMENTAL LAW AND ASIAN VALUES: LEGAL NORMS AND CULTURAL INFLUENCES* (2004).

14. BODANSKY, *supra* note 5, at 197.

15. *Id.* at 200.

16. *See id.* at 155.

Every ten or twenty years or so, new paradigms of international discourse have emerged and dictated a new course in international environmental law. During the last couple of decades, sustainable development, which was the outcome of the 1992 Rio Summit, was the dominant theme in international environmental law. The concept of sustainable development was further developed in the World Summit on Sustainable Development (WSSD) in 2002.

The twentieth anniversary of the Rio Summit (Rio+20) represents a critical juncture in international discourse on sustainable development, by providing an opportunity to assess the progress made so far and to refocus efforts on making sustainability more tangibly integrated with effectuated national policies. The three pillars that constitute sustainable development — economic, environmental and social — are being re-examined. Rio+20 is an occasion to promote better integration of the three pillars, made more essential due to recent economic crises as well as volatile energy and food prices.<sup>17</sup> The Conference's two main themes, (1) Green Economy (EG) in the context of sustainable development and poverty eradication and (2) a strengthened Institutional Framework on Sustainable Development (IFSD), are expected to shape the broad outlines of international environmental discourse for the next decades.

The countries view green economy as a means to achieve sustainable development, which remains an overarching goal. This common perspective underscores that the green economy is not intended as a rigid set of rules, but rather as a decision-making framework to foster integrated consideration of the three pillars of sustainable development.<sup>18</sup> The social pillar is especially emphasized as a response to the concerns of equity, such as disparities in access to resources and food. All of these concepts have been developed through continuous processes of social learning. Professor Bodansky points out that the international regimes “build normative consensus not only about basic goals and values but also about possible outcomes.”<sup>19</sup> The Rio+20 discussions, likewise, do not only reiterate the basic principles but are inundated with words like “policy toolkit”, “roadmap”, “action plans”, or “no one-size-fits-all solutions.”

### ***B. Interdisciplinary Aspect***

Professor Bodansky views international environmental law with a much broader perspective than other scholars, thus liberating the idea of legal mechanisms from a rigid definition. The nature of environmental problems and international governance requires that practitioners be more creative when thinking about global environmental problems, which are inherently interdisciplinary. He introduces theories and methodologies from economics, political science, philosophy, sociology, and anthropology in diagnosing environmental problems and in explaining norm formulation.<sup>20</sup> He traces how customary norms are developed and maintained, not through an orthodox doctrinal perspective, but from an

17. Rio+20, United Nations Conference on Sustainable Development, Rio de Janeiro, June 20-22, *The Future We Want* 4, 8 Zero draft of the outcome document (Jan. 10, 2012), available at <http://www.uncsd2012.org/rio20/futurewewant.html>.

18. *Id.* at 6.

19. BODANSKY, *supra* note 5, at 152.

20. *See* BODANSKY, *supra* note 5, chs. 3, 9.

empirical standpoint, just like a legal anthropologist observes an alien society. He describes the negotiation process and demonstrates how the relevant principles emerge, how they set boundary conditions for the development of more precise behavioral rules, and then serve to frame the debate rather than to govern conduct. From this perspective, imperfect, imprecise, incoherent rules that are often found in many international environmental legal instruments are not necessarily an indication of bad laws; instead, they are a natural outcome of the “process.” He explains how the dynamic nature of environmental challenges requires flexibility,<sup>21</sup> and how, as a result, international environmental law is less precise than traditional legal models.<sup>22</sup> International environmental law has developed its own norms and models that allow for flexibility in the process.

Whether a negotiation successfully yields good law cannot be evaluated from a single legal standpoint. For legal scholars and judges, consistency and precise language may be valued. However, for a practitioner in the field, a good international environmental law (regardless of customary law or treaty law) is one that guarantees procedural transparency. This aspect cannot be derived from a final document. Only an elaborate ethnographic account can show the holistic picture, and the author’s experience as a participant and an insider is a great asset to present the comprehensive understanding of the process.

### *C. Political reality*

International environmental law is not free of political motivations and dimensions.<sup>23</sup> Professor Bodansky shows the larger landscape of international environmental law by providing the current structure of the field, and he shares questions that the international environmental legal community is working to answer. He views the process of developing international environmental law as a reflexive exercise by state officials in developing their own understandings of what is the environment, and how they are affected by environmental change; in this context, he emphasizes the importance of “the epistemic community.”<sup>24</sup> He argues that international agreements can change “a state’s perceptions of its own interests through a process of social learning.”<sup>25</sup>

The power of persuasion and influence is multifaceted. Take, for example, the Northeast Asian environmental cooperative regime involving South Korea, Japan, and China. Confronted with the challenge of transboundary pollution called “yellow dust,” the three countries began formulating proper instruments and institutions to deal with the problem.<sup>26</sup> The process was not smooth, as each country had different positions and interests. Each country was hesitant to take the economic initiative or let other countries assume political leadership in order to maintain the balance of power in this region in the beginning. On the other hand, knowledge-based cooperation was possible. The most effective avenue of

21. *Id.* at 270.

22. *Id.* at 14.

23. See Kenneth W. Abbott, *Modern International Relations Theory: A Prospectus for International Lawyers*, 14 YALE J. INT’L L. 335 (1989).

24. See BODANSKY, *supra* note 5, at 147.

25. *Id.* at 152.

26. Whasun Jho & Hyunju Lee, *The Structure and Political Dynamics of Regulating “Yellow Sand” in Northeast Asia*, 33 ASIAN PERSPECTIVE 41 (2009).

collaboration was in determining the scientific basis of the problem. Scholars of each country collected data, established focal points for communication, and met regularly to assess the data. Regional international organizations such as the United Nations Economic and Social Commission for Asia and the Pacific (UNESCAP) and the Asia Development Bank (ADB) provided forums for discussion of this issue. Non-governmental organizations in each country also formulated networks of experts, and they performed better than government networks.<sup>27</sup>

Although the regional environmental cooperative scheme is still under way in terms of formal institutional development and legally-binding instruments, the Northeast Asian environmental cooperation case demonstrates the prevailing characteristic of scientific leadership taking precedence over economic or political leadership and the emergence of the epistemic community based on such leadership. Professor Bodansky's general explanation of the multiplicity of engaging parties (Chapter 6) and the consensus-building process (Chapter 7) can be vividly applied in various contexts.

#### ***D. Goal-oriented compliance***

Professor Bodansky discusses in detail the issue of implementation and compliance in Chapters 10, 11, and 12. He describes abundant literature in this field and applies the theories in his discussion of treaty design.<sup>28</sup> In addressing and responding to the problem of non-compliance, both managerial and enforcement approaches are introduced. This is actually the culminating point of all his previous discussions. Different procedures and mechanisms can be derived from different theories of state behavior, regime development, and the very meaning of the effectiveness of the regimes in translating obligations into implementation. Although he does not characterize managerial and enforcement approaches as mutually exclusive, he seems to tilt more towards the managerial camp.

Professor Bodansky himself participated in the formative discussions that developed the Article 18 (Non-compliance) schemes under the Kyoto Protocol, an institutional outcome philosophically based on managerial thinking of the treaty compliance. The issue of compliance was indeed at the center of the debate during the negotiation that resulted in the Marrakech Accord. As Bodansky aptly shows, usages of various carrots and sticks, e.g., coercion, inducement, and social learning, are used. The Kyoto compliance scheme, as I understand it, has more enforcement elements than similar schemes in other multilateral environmental treaties,<sup>29</sup> as it functions through two separate (facilitative and enforcement) branches.

The inside story of the Kyoto compliance system provides an excellent example about how "rules of the game" are formulated by the "players in the game." A group of repeat players in a closely-knit community can set the course and they communicate with each other as a

27. *Id.* at 57.

28. See for instance, *THE IMPLEMENTATION AND EFFECTIVENESS OF INTERNATIONAL ENVIRONMENTAL COMMITMENTS: THEORY AND PRACTICE* (David G. Victor, Kal Raustial, Eugene B. Skolnikoff eds., 1998); , *ENGAGING COUNTRIES: STRENGTHENING COMPLIANCE WITH INTERNATIONAL ENVIRONMENTAL ACCORD* (Edith Brown Weiss and Harold K. Jacobson eds., 1998).

29. For instance, the Montreal Protocol, the Basel Convention, and the Biosafety Protocol, all have non-compliance procedures with much less "teeth" in them.



negotiation bloc. A group of “norm entrepreneurs” intervenes to advance particular ideas and agendas.<sup>30</sup> Using an actor-oriented analysis, Bodansky vividly illustrates how some individuals at the negotiation table stand out because of their expertise and experience. Where there are obstacles and impasse in negotiation, strong leadership can find a way to move forward. At the last minute negotiations of the Kyoto compliance system, then Conference of the Parties chairperson Jan Pronk successfully elicited consensus among divided parties with persistence and candor. From my own observation, the Kyoto Protocol could not have been entered into force without his critical engagement in striking the Bonn Agreement in 2001.<sup>31</sup> The international environmental arena exemplifies a broader trend where individual normatization takes place alongside individual leadership breakthroughs.

### ***E. Voluntary approaches***

A more conspicuous development in the international environmental arena is the increasing importance of non-state actors in creating self-regulated rulemaking.<sup>32</sup> Bodansky mentions this in the context of non-binding soft-law instruments, e.g., business codes of conduct<sup>33</sup> and standard-setting initiatives.<sup>34</sup> A group of so-called “reflexive environmental law” scholars in particular have pointed out a greater “proceduralization” of environmental law in the form of procedures for regulated entities to follow, such as internal firm management systems, rather than detailed pronouncements of acceptable behavior.<sup>35</sup> A primary objective of information disclosure is to encourage “self-regulatory” behavior to complement existing direct control systems and attendant enforcement regimes. Companies started to provide periodic external communication of environmental performance information by means of a single, stand-alone document (a “corporate environmental report”) generally analogous to an annual corporate financial report, which has over time been transformed into a much broader and comprehensive “corporate sustainability reporting.”<sup>36</sup>

A variety of concepts such as sustainable development, corporate citizenship, sustainable entrepreneurship, Triple Bottom Line, business ethics, and corporate social responsibility are now interchangeably used in connection with corporate sustainability. In the beginning, notions of Corporate Social Responsibility (CSR) and Corporate Sustainability (CS) — the two most frequently used terms — followed separate paths, but have now converged. While CSR focuses on social issues such as human rights and labor, the concept of CS is rooted in environmental concerns. CS is, however, a much broader concept than environmental

30. BODANSKY, *supra* note 5, at 193.

31. I personally participated in the closed-door, round-the-clock-negotiation as an Environmental Integrity Group (composed of countries such as Korea, Mexico, and Switzerland) delegate at the COP 6-bis in Bonn.

32. ASEEM PRAKASH & MATTHEW POTOSKI, *THE VOLUNTARY ENVIRONMENTALISTS: GREEN CLUBS, ISO 14001, AND VOLUNTARY ENVIRONMENTAL REGULATIONS* (2006).

33. BODANSKY, *supra* note 5, at 107.

34. *Id.* at 134.

35. Eric W. Orts, *Reflexive Environmental Law*, 89 NW U. L. REV. 1227 (1995).

36. For a general overview, refer to UNITED NATIONS ENVIRONMENTAL PROGRAMME ET AL., *Carrots and Sticks — Promoting Transparency and Sustainability*, available at <https://www.globalreporting.org/resource/library/Carrots-And-Sticks-Promoting-Transparency-And-Sustainability.pdf>.

protection or environmental performance. The trend of widespread usage of CS can also be witnessed in company performance reports statistics. According to CorporateRegister.com, which tracks sustainability reporting worldwide, the number of companies producing environmental reports is declining, while the number producing sustainability reports is rapidly increasing over time. Non-governmental organizations such as Global Reporting Initiatives (GRI) and International Standard Organization (ISO) are setting the guidelines for corporate sustainability reporting.

This development of private sector engagement in “de facto” binding international environmental lawmaking has been phenomenal. The financial sector is also involved in creating its own evaluation indices on corporate sustainability performance.<sup>37</sup> In the climate change regime, a growing number of companies disclose carbon-related information under NGO-led Carbon Disclosure Projects. Also, voluntary carbon markets use a number of voluntary carbon standards developed by self-regulating entities. These self-regulating codes impact the companies concerned just like binding hard laws do. Professor Bodansky briefly mentions all this, but he should have elaborated more on the dynamic aspects in order to broaden the horizon of international environmental law. However, he deserves credit for discussing the impact of private-led and voluntary standards much more than other traditional casebooks.<sup>38</sup>

## ***F. International Environmental Governance***

The international community has undergone significant reevaluation of the implementation status of sustainable development. To some observers such as Daniel Esty, intergovernmental organizations managing environmental issues “have been given narrow mandates, small budgets and limited support [and n]o one organization has the authority or political strength to serve as a central clearinghouse or coordinator.”<sup>39</sup> Key weaknesses to date relate to institutional governance failures and a lack of capacity and resources,<sup>40</sup> and a global umbrella organization modeled after the WTO has been suggested as a response to these deficiencies.<sup>41</sup> Bodansky generally discusses the institutional governance in the context of who the players are, showing that there are multiple layers of institutions to deal with the international environmental problems, including secretariats of the multilateral environmental agreements, often with overlapping mandates (Chapter 6). He also introduces the institutional reform proposals in the concluding chapter, without elaborating many details.

37. PAUL A.U. ALI & KANAKO YANO, *ECO-FINANCE: THE LEGAL DESIGN AND REGULATION OF MARKET-BASED ENVIRONMENTAL INSTRUMENTS* (2004).

38. For example, these private self-regulation schemes are largely disregarded in most casebooks. See BIRNIE, BOYLE & REDGWELL, *supra* note 3; DONALD K. ANTON, ET AL., *INTERNATIONAL ENVIRONMENTAL LAW: CASES, MATERIALS, AND PROBLEMS* (2007).

39. DANIEL C. ESTY, *GREENING THE GATT* 78 (1994).

40. . Philippe Le Prestre & Benoit Martimort-Asso, *Issues Raised by the International Environmental Governance System* (Institut du Développement Durable et des Relations Internationales), Global Governance, Paper No. 12, (2004), *available at* [http://www.iddri.org/Publications/Collections/Idees-pour-le-debat/id\\_0412bis\\_bma&leprestre\\_IEG-failures\\_eng.pdf](http://www.iddri.org/Publications/Collections/Idees-pour-le-debat/id_0412bis_bma&leprestre_IEG-failures_eng.pdf).

41. ESTY, *supra* note 39; Frank Biermann, *The Case for a World Environment Organization*, 42 ENV'T 22, 28-29 (2000).

The debate on international environmental governance is not a new one. In the Rio+20 preparatory meetings, several proposals were put forward in order to reinforce coherence among the agencies, funds and programs of the United Nations system, including International Financial and Trade Institutions: (1) General or Economic and Social Council, (2) Commission on Sustainable Development or to transform it to Sustainable Development Council, or (3) enhancing UNEP.<sup>42</sup> While any one of these proposals prevails over the others at the moment, the issue of institutional reform in the international environmental governance is a very critical one that cannot be taken lightly.

The reform of international environmental governance can be made at the national, regional, and international level, by enhancing the functioning of the existing bodies and the coordination among them. Also suggested in the Rio+20 is strengthening existing regional and sub-regional mechanisms, including the regional commissions, in promoting sustainable development through capacity building, exchanging information and experiences, and providing expertise. At the same time, private-public partnerships in international institutions are observed to be increasing, notably in the health and climate finance sectors.<sup>43</sup> In the climate change context, the Asia Pacific Partnership on Clean Development and Climate, for example, continues to seek the technology-based cooperation involving the industry sector in order to transform into a viable international institutional framework to tackle the climate change more effectively.<sup>44</sup> This evolving character of the global environmental governance structure is something the author might wish to elaborate upon in the future

#### IV. Concluding remarks

In his concluding chapter, Professor Bodansky provides a cautious optimism about the future of international environmental law. He is advocating the development of “dynamic regulatory regimes that can respond flexibly to new knowledge and problems,” and “a pragmatic and forward-looking approach to issues of compliance and effectiveness.”<sup>45</sup> Although not a panacea, international environmental law has succeeded in some areas with distinctive mechanisms. I totally agree with his evaluation and outlook. In the end, I believe his characterization of international environmental law as an “art” and a “craft” quite convincing and every reader will enjoy reading this excellent work.

42. Rio+20, *supra* note 17, ¶¶ 45-58.

43. Davinia Aziz, *Global Public-Private Partnerships and International Law: New (Mis)uses of International Organization Privileges and Immunities* (Asian Soc’y Int’l Law. Working Paper No. 2, 2010), available at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1660743](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1660743).

44. Peter Lawrence, *The Asia Pacific Partnership on Clean Development and Climate (AP6): A Distraction to the Kyoto Process or a Viable Alternative?*, 10 ASIA PAC. J. ENVTL. L. 183 (2007) (Austl.).

45. BODANSKY, *supra* note 5, at 270.