The Oxford Handbook of International Environmental Law. Ed by Daniel Bodansky, Jutta Brunnée and Ellen Hey

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THE OXFORD HANDBOOK OF INTERNATIONAL ENVIRONMENTAL LAW. Ed by Daniel Bodansky, Jutta Brunnée and Ellen Hey
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The environmental threats facing the world today are immense. Many are global in scale and it is only through concerted action that the international community can meet them. International law is a key tool in the fight against climate change, biodiversity loss and other major environmental problems. An increasing number of international treaties, declarations and other instruments address environmental issues. Indeed, according to the editors of the *Oxford Handbook of International Environmental Law*, international environmental law has evolved into a "distinct field" with its own principles, institutions and even terminology (24). They argue that it transcends traditional state-centric concepts of international law to tackle common concerns of the international community (10-11; Brunnée, ch 23). In the words of another contributor to this volume, international environmental law has entered a post-modern era, which can be traced from the 1992 Rio Conference on Environment and Development (Sands, 31).

Fifteen years after the Rio Conference, it is perhaps time to stand back and see how far we have come in our efforts to tackle the threats to the global environment. The aim of the *Handbook* is to "take stock of the field as a whole, exploring its core assumptions and concepts, its basic analytical tools and key challenges" (preface). It does so through a compilation of forty-five chapters by leading scholars and commentators, arranged in seven thematic sections.

Much of the analysis concentrates on the plethora of treaties in this area. What is interesting about these treaties is not necessarily their subject matter, but their design. As one contributor notes, "environmental treaty systems are designed to facilitate and speed up the dynamic development of substantive regulations" (Gehring, 468). The *Handbook* considers the features of environmental treaties from a variety of perspectives. Gehring provides an overview of treaty-making processes in this field, whilst other authors address sectoral regimes (Rowlands, ch 14; Freestone and Salman, ch 15; Rayfuse, ch 16; Wirth, ch 17) or analyse specific institutional mechanisms common to several environmental agreements (Wettestad, ch 42; Klabbers, ch 43; Romano, ch 45).

The so-called "constitutionalisation" of environmental regulation, through the creation of treaty regimes, is an important characteristic of international environmental law, as it allows flexible and timely responses to complex environmental problems (Gehring, 473-4). Such innovations in law-making techniques indicate a shift away from traditional concepts of international law based on consent and state sovereignty. International institutions and non-state actors play a much greater part in modern environmental law-making than in the past. For instance, "assessment of scientific and technological knowledge introduce, if successfully operating, a sphere of technical deliberation into the bargaining process" (Gehring, 496; Andresen and Skjærseth, ch 9). In addition, the delegation of decision-making powers to administrative bodies may also bypass the balancing of state interests that has traditionally been the basis of international law (Gehring, 496). Occasionally, standards may be set by private or quasi-private entities with minimal state involvement (Morrison and Rhot-Arriaza, ch 21).

These developments are intended to promote the effectiveness and efficiency of international environmental law. However, as the governance of environmental problems is displaced from "distributed administration" towards "direct administration by

intergovernmental organizations or networks", or towards "hybrid or private administration", questions of accountability and legitimacy of law-making and application are raised (Kingsbury, 64; Bodansky, ch 30). It is not only how laws are made that is important, but who is involved in making them. Participation in environmental law-making is a major theme of the *Handbook*, with various chapters discussing the role of business (Ratner, ch 35), civil society (Spiro, ch 33), and other groupings in environmental governance. Short of global democracy, the involvement of non-state actors has arguably added to the transparency and legitimacy of international environmental law. Spiro asserts that the role of civil society in international environmental institutions is likely to increase (789), although a sceptic would suggest that its contribution is ultimately subject to the willingness of states to give them a seat at the table.

The *Handbook* brings together a wealth of material in a single (if weighty) volume. However, at times, it appears to stray into areas that may not be strictly speaking legal, and one wonders whether a title such as "International Environmental Governance" would better capture the depth and diversity of topics addressed. For instance, part II (Analytical Tools and Perspectives) considers international relations theories, as well as economic, ethical and critical theories of environmental regulation. Such topics are more familiar to political scientists than lawyers – even international lawyers.

At the same time, a strictly legal approach to questions of international environmental law is not always appropriate. As Rayfuse notes in her chapter on biodiversity, "when viewed on paper, one might be forgiven for thinking that adequate protections have been developed to ensure their continuing viability and vitality. Unfortunately, species, habitat, and genetic diversity loss is now considered to be reaching crisis proportions" (364-365). In other words, it is vital to assess the law against its purported aims. It is in this context that political science and other disciplines may be instructive. Nor are traditional models of legal enforcement, based on courts and litigation, always the most appropriate way of addressing the efficiency of environmental agreements. Other factors such as instrument choice (Stewart, ch 8) and compliance mechanisms (Mitchell, ch 39) are also important tools in this field of law.

In addition, it is sometimes difficult to distinguish law from policy in this field, because of the propensity for international environmental regimes to invoke what Beyerlin calls "twilight norms" (425). There are many key environmental "norms" that potentially belong to this category, such as the precautionary principle, common but differentiated responsibilities, equitable utilisation, intergenerational equity, and sustainable development. Some scholars attribute legal value to these "norms" whilst others remain sceptical. These issues are the subject of detailed analysis in part V on Key Concepts.

Readers of the *Handbook* will find adequate coverage of many of the familiar international environmental problems, such as climate change and biodiversity. More interesting is the treatment of systemic issues that arise in this field of international law. As one contributor comments, "it is meant to be illustrative – providing the reader with a sense of the range of the issues in existence and the key themes that are emerging in response" (Rowlands, 316). The editors themselves assert that the *Handbook* differs from textbooks on the subject because it does not aim to describe the substance of the law, but to "analyse the field in more conceptual terms, focusing on issues of structure and process" (4). Largely, they have succeeded in their task.

One is left with the impression that international environmental law is somehow different from other areas of international law. Its distinctiveness, however, should not be overstressed. Constitutionalisation and global governance are topics that are familiar throughout international law. Indeed, as one contributor notes, international environmental law is more an ordinary branch of international law than other branches which fall under the auspices of a single organisation or have been systematically codified (Boyle, 126). Labels such

as international environmental law, international trade law and international human rights law are convenient but they are no more than labels. It follows that there may be lessons that international environmental law can learn from other fields of international law, and vice versa. What is clear is that all fields of international law face testing challenges in the years to come as they seek to tackle increasingly globalised threats, to which traditional models of international law may not offer a satisfactory response.

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