



5-24-2013

Book Review: Daniel Bodansky, *The Art and Craft of International Environmental Law*

Sandrine Maljean-Dubois

Vanessa Richard

Follow this and additional works at: <http://digitalcommons.law.scu.edu/scujil>



Part of the [International Law Commons](#)

Recommended Citation

Sandrine Maljean-Dubois and Vanessa Richard, *Book Review: Daniel Bodansky, The Art and Craft of International Environmental Law*, 10 SANTA CLARA J. INT'L L. 241 (2013).

Available at: <http://digitalcommons.law.scu.edu/scujil/vol10/iss2/2>

This Article is brought to you for free and open access by the Journals at Santa Clara Law Digital Commons. It has been accepted for inclusion in Santa Clara Journal of International Law by an authorized administrator of Santa Clara Law Digital Commons. For more information, please contact sculawlibrarian@gmail.com.

Book Review: Daniel Bodansky, The Art and Craft of International Environmental Law

Sandrine Maljean-Dubois* & Vanessa Richard**

Serious, complex, and to some extent irreversible, threats to the environment are also global. The destruction of the ozone layer, climate change, air, water and soil pollutions, biodiversity decrease, deforestation and desertification are indeed threats to the environment on a global scale. Migratory birds and fishes but also radioactive clouds, oil cakes, acid rain, chemical products and heavy metals do not respect borders and ignore customs officers.

The law is called upon to protect the environment, and especially international law, since stakes have become really transnational. Thus, designed as a series of international legal rules for the purpose of environmental protection, international environmental law has for forty years been seeing a considerable expansion. If one only takes account of written sources, more than 500 multilateral treaties, and an even greater number of bilateral treaties, are registered, and much more numerous are 'softer' instruments: thousands of international declarations or resolutions. International environmental law is relatively comprehensive and today covers a broad spectrum of types of ecosystems, resources and activities. The impressive size of the regulation scaffolding is all the more formidable if one recalls the relative youth of a field whose development really took off from the early 1970s only.

Sometimes presented as the most vigorous and innovative field of international law — as a 'laboratory' for tomorrow's international law — sometimes as a clear illustration of the inability of international law to regulate the international society, international environmental law (IEL) is a fascinating area of study for internationalists concerned with observing and analyzing international law *in action*. It is also a very complex area, at the same time abundant, technical and changing. In addition, in order to properly address it students, scholars or practitioners need a good knowledge of and background in international law, but also in international relations, economics, and of course in environmental sciences.

* CNRS Senior Researcher, Head of the Center for International and European Studies and Research (CERIC), Joint Research Unit No. 7318 CNRS/Aix-Marseille University (France).

** CNRS Researcher, Center for International and European Studies and Research (CERIC), Joint Research Unit No. 7318 CNRS/Aix-Marseille University (France).

This is why the enterprise of Daniel Bodansky is so welcome in the editorial landscape. At the early beginning of *The Art and Craft of International Environmental Law*, the author explains his purpose to present this very large and complex field of international law in a very simple manner. The whole book is divided into twelve chapters, presenting IEL from a chronological, 'life-cycle' point of view, from birth to implementation. Daniel Bodansky starts from simple and accessible questions: Why do we need international environmental law? How does it develop and influence state and non-state actors? How does it work? Why isn't it (always) effective?

As a good teacher, the author relies on numerous examples, uses a lot of images, and from time to time invites us to "Imagine we were . . ." to give us a very concrete view of IEL. The reader will also appreciate Daniel Bodansky's pluridisciplinary approach, taking in a broad view of law, and mobilizing knowledge from various disciplines (history, philosophy, economics, religion, sociology etc.). Moreover, Daniel Bodansky allows the reader to go further with a list of recommended reading at the end of each chapter; the selection — very personal and mainly American — is very useful with respect to the profusion of books and articles in this field.

Another welcome feature of Daniel Bodansky's book is that the author is careful to explain in the preface some aspects of the background of his approach, as a legal scholar, a practitioner, and a U.S. citizen. Similarly, the fact that Daniel Bodansky notes that his analysis of the influence that domestic politics have on states' positions in international negotiations might only be accurate to the extent that liberal democratic states are concerned¹ is rare enough in western authors' specialized literature to not be praised. We indeed often forget that our analyses can be based on prescripts originating from a specific culture, which is not shared elsewhere. Despite this caution, Daniel Bodansky's frequent recourse to comparisons with the U.S. domestic system to make understanding easier might not be very enlightening to non-U.S. readers, an unavoidable pitfall we all meet when trying to make international legal dynamics accessible by relying on situations with which the reader is expected to be more familiar.

The title of the book, *The Art and Craft of International Environmental Law*, is undoubtedly a real find. It presents IEL as a craft, and in some respects as an art, using proper and specific techniques and producing specific objects to perform specific functions. As Daniel Bodansky states, IEL is "more an art than a science"² as there is never a "simple formula" to tell us what to do. Certainly, international environmental law is no more than international law applied to environmental issues. In other words, not even the sources of IEL are specific. But the law-making process shows a number of characteristics and peculiarities. Daniel Bodansky successfully highlights the original aspects of the matter, which result from an "impressive ingenuity"³ of IEL. Consequently, he focuses on questions of structure, procedure and legal technique rather than content; he concentrates on the *instrumentum* rather than on the *negotium*, and dedicates himself to the study of the

1. DANIEL BODANSKY, *THE ART AND CRAFT OF INTERNATIONAL ENVIRONMENTAL LAW* 115-16 (2010).

2. *Id.* at 270.

3. *Id.* at 269.

processes of formalization, enactment and implementation of IEL rather than the normative proposals it carries. Even if the author builds on a lot of concrete and precise examples, *The Art and Craft of International Environmental Law* does not intend to present a general picture of the content of IEL, either with regard to customary rules or the norms set up in the framework of its many conventions.

The first set of chapters is dedicated to environmental public policies. Daniel Bodansky clearly explains why states need to cooperate to address environmental issues. He also successfully highlights the sophistication of the ‘policy toolkit’ or, to stick to the metaphoric title of the chapter “Prescribing the Cure”⁴, the ‘medicine cabinet’ available to decision-makers in the field of IEL, and offers a clear categorization of the cabinet’s content despite the wide range of policy instruments and options.

A second set of chapters relates to norms and law. Among many issues, it addresses what is today a core issue for scholars and even for practitioners: What does it mean to say that a norm is legally binding?⁵ More broadly, the issue gives rise to specific questions with regard to international law. Like Daniel Bodansky, a careful observer of the international life is led to be open-minded and to depart from a strict positivist approach. The *summa divisio* between law and non-law does not stand up to scrutiny anymore. It is less a definite line than a blurry zone.

One has to acknowledge that the normative density of international environmental law is extremely variable. Soft law is remarkably abundant in IEL as well as extremely varied. Firstly, the term *soft* does not refer to the formal source alone. It can both allude to a particularly flexible conventional obligation and to a non-mandatory tool. In the environmental field, many conventional obligations have been so weakened that they have become evasive and barely perceptible. A number of normative proposals are non-mandatory because they have not been written as prescriptive norms or have been written using such generic terms that they cannot be applied without additional clarifications. This is the case for almost all of the provisions of the Rio Convention on Biological Diversity, which begin with either “Each contracting party shall, *as far as possible*, and where appropriate” or “Each contracting party shall, *in accordance with its particular conditions and capabilities*. . .”⁶

This said, the qualifier *soft* can encompass a large number of very different instruments, regarding both their nature and content: resolutions by international organizations, secondary law adopted by the bodies of international conventions on environmental protection, declarations (such as the Rio Declaration), technical norms, standards, memoranda of understanding, strategies and action plans, codes of conduct, guidelines, public-private partnerships, etc. These instruments offer some advantages compared with classic, formal sources. They allow more flexibility, their negotiation is in principle less time-consuming, and they are more progressive. Some can be entered into by parties who have not been recognized as subjects of international law (for example a memorandum of understanding between two secretariats of international conventions, or a public-private

4. *Id.* at 57-85.

5. *Id.* at 96.

6. United Nations Conference on Environment and Development: Convention On Biological Diversity, Rio de Janeiro, Braz, June 5, 1992, *reprinted in* 31 I.L.M. 818 (emphasis added).

partnership). Even if instruments of soft law are at first sight non-binding, in practice they can still have some legal value: the care taken in negotiating the content of such instruments, together with states occasionally accepting the implementation of follow-up and control mechanisms, provide convincing clues as shown by the role of the Commission on Sustainable Development in the follow-up of Agenda 21's implementation. In short, hard tools can contain soft law provisions and soft tools can sometimes give birth to binding consequences. The degrees of normativity and effectiveness of soft law instruments are in fact variable. The *summa divisio* between *hard* and *soft*, between mandatory and non-mandatory (binding and non-binding) does not, in any case, stand up to an in-depth analysis.⁷ Should we see pathological symptoms in this variable normativity,⁸ comprising at one end of the scale norms with strengthened authority (*jus cogens* and *erga omnes*) and, at the other end, norms whose normative nature and quality are “muffled”⁹ and that some describe as “twilight norms”?¹⁰

Soft law can be seen as pre-law or “green law” *in statu nascendi*, a crucible for positive law, whether it marks a stage in the creation of a conventional or a non-conventional rule. It can also reveal the existence of customary law. One merely needs to refer to the considerable role played in the further development of IEL by the 1972 Stockholm Declaration, the 1992 Rio Declaration, or the 1982 World Charter for Nature.¹¹ These important texts of IEL paved the way for the adoption of conventional rules and crystallized or contributed to crystallizing them, or even revealed the existence of customary rules. One can also note that guidelines have in several occasions become international conventions. As Georges Abi-Saab sums up, soft law thus serves as a precursor and engine to the dynamic and cumulative process of law development and marks its passage through grey areas.¹²

Yet soft law can be not only a means to achieve an end but the end in itself.¹³ It should then be analyzed not as *pre-law* but as another type of law, “a type of law which fulfills a different function from a limiting law; not the law of the upholder of law or the gendarme, but the more pliable and discrete law of the social architect.”¹⁴ We are thinking here about agreements such as Agenda 21, a vast action plan for sustainable development adopted during the Rio Summit in 1992, for which, moreover, an implementation monitoring system was set up. Equally, numerous documents of orientation, action plans and strategies are

7. See COMMITMENT AND COMPLIANCE: THE ROLE OF NON-BINDING NORMS IN THE INTERNATIONAL LEGAL SYSTEM 560 (Dinah Shelton ed., 2000).

8. Prosper Weil, *Vers une normativité relative en droit international?*, 5 RGDIP 429-431 (1982).

9. Georges Abi-Saab, *Eloge du “droit assourdi” — Quelques réflexions sur le rôle de la soft-law en droit international contemporain*, in NOUVEAUX ITINÉRAIRES EN DROIT, HOMMAGE À F. RIGAUX 60 (1993) (author's translation).

10. Ulrich Beyerlin, *Different Types of Norms in International Environmental Law: Policies, Principles, and Rules*, in THE OXFORD HANDBOOK OF INTERNATIONAL ENVIRONMENTAL LAW 428 (Daniel Bodansky et al. eds., 2007).

11. Stockholm Declaration: Declaration of the United Nations Conference on Human Environment, Stockholm, Sweden, June 16, 1972, A/CONF.48/14; World Charter for Nature: UNGA Resolution, Oct. 28, 1982, A/RES/37/7; Convention On Biological Diversity, *supra* note 6.

12. Georges Abi-Saab, *Cours général de droit international public*, in COLLECTED COURSES OF THE HAGUE ACADEMY OF INTERNATIONAL LAW 207, 210 (1987) (author's translation).

13. Abi-Saab, *supra* note 9, at 66.

14. Abi-Saab, *supra* note 12, at 213.

adopted as part of a given conventional space.¹⁵ Certain significant actions have originated from non-binding resolutions by international organizations (UNESCO's Man and the Biosphere program or the European Diploma of the European Council for example). And what about the Millennium Development Goals, crucial and recognized as such by all and yet non-mandatory? And has not the World Bank Inspection Panel¹⁶ been set up as an independent body by the World Bank to examine the requests emanating from people who allege they are or will be affected by a project which is financed by the International Bank for Reconstruction and Development or the International Development Association, and whose present or potential harm results from a breach, by these agencies' staff, of their operational policies and procedures?¹⁷

Let us add that very important "decisions" (*de facto* if not *de jure*) are regularly adopted by the Conference of the Parties (COPs) of multilateral environmental agreements (MEAs). If one takes the international climate change regime as an example, the Kyoto Protocol merely provides for the set up of flexibility mechanisms. The practical details on how flexibility mechanisms must operate were drawn up by dozens of resolutions adopted by the COP. Without those, flexibility mechanisms could not work. Also in the framework of the Kyoto Protocol, one notes that some bodies, other than the COP, can play a part in decision-making. One can think, for example, of the Clean Development Mechanism's Executive Board, who has been given significant operational powers, turning it into an international administration with real power.¹⁸ Like in this example, the treaty is often only the visible tip of the iceberg: "the majority of the norms develop through more flexible and dynamic processes, which result in formally non-legally binding decisions."¹⁹

One could also recall the award of the Arbitral Tribunal in the *Iron Rhine Arbitration*, which claims, regarding a Memorandum of Understanding (MOU), that "The Parties agree that, as a matter of international law, the March 2000 MOU is not a binding instrument," but that "[a]t the same time, it was clearly not regarded as being without legal relevance."²⁰ In accordance with principles of good faith and reason, the MOU was used in particular to throw light on and interpret two international treaties.

But where a few years ago we would have seen a normative slump, we today wonder whether there is not a blurring of the borders between law and non-law instead, between *hard law* and *soft law*. Can we consider, along with Georges Abi-Saab, that with regard to legal phenomena, wanting to encapsulate and define them exclusively in terms of threshold

15. For example, the Ramsar Strategic Plan 2009-2015 adopted by the Conference of the Contracting Parties to the 1971 Ramsar Convention on Wetlands of International Importance; the Strategic Plan adopted by the Conference of the Parties to the 1992 Convention on Biological Diversity; and action plans per species adopted in the framework of the 1979 Bonn Convention on Migratory Species.
16. Int'l Bank for Reconstruction and Dev. [IBRD] Res. 93-10 and Int'l Dev. Ass'n [IDA], Res. 93-6 (Sept. 22, 1993), establishing the World Bank Inspection Panel.
17. *Id.* at 15.
18. Benedict Kingsbury, *Global Environmental Governance as Administration: Implications for International Law*, in THE OXFORD HANDBOOK OF INTERNATIONAL ENVIRONMENTAL LAW 63, 75 (Daniel Bodansky et al. eds., 2007).
19. Daniel Bodansky et al., *International Environmental Law: Mapping the Field* in THE OXFORD HANDBOOK OF INTERNATIONAL ENVIRONMENTAL LAW 1, 21 (Daniel Bodansky et al. eds., 2007).
20. *Iron Rhine Railway (Belg. v. Neth.)*, Hague Ct. Rep. (Perm. Ct. Arb. 2005), ¶¶ 156-57.

means subscribing to an instantaneous theory or a ‘big bang’ theory of the creation of law, and amounts to ignoring all that came before this point, that is to say the cumulative process which led to it and continues beyond? Moreover, wanting to impose thresholds and borders at all costs on continuous legal notions and phenomena necessarily entails a large share of arbitrariness and tricks.²¹ Beyond that, can the legalist (basic positivist) accept “deformalization”?²² Can one say that increasing porosity between hard and soft law is pushing the question of the instruments’ legal nature into the background? Many of them have an uncertain legal nature and still are applied daily without any questions being raised about their legal character. Many conventional or customary obligations are, on the other hand, wrongly applied. Finally, as long as the state of mutual interest peacefully remains, the legal aspects of the relationships can seem to be secondary.²³ Isn’t then the fundamental question (or the fundamental factor) in the “compliance pull”²⁴ that of the instruments’ legitimacy? To say this does not amount to denying the importance of the procedures and processes of normative creation. The more open, transparent and inclusive they are, the more norms will fit some criteria of internal legitimacy.²⁵

On all these issues, the reading of Daniel Bodansky’s book is very stimulating and his analyses are both subtle and nuanced. We agree with him when he states that the distinction between law and non-law has to be qualified, explaining at the same time why in some ways the legal form is still important.²⁶ The Climate Conference of Durban in December 2011 has well illustrated the importance states give to the legal form issue. A question however arises about the issue of the *legality* of soft law as addressed in the book. According to Daniel Bodansky, soft law stemming from tools that do not belong to the ‘hard tools’ category is normative but those norms “do not qualify as ‘legal’ in character.”²⁷ However, isn’t ‘soft law’ *law*, even if non-compulsory? In other words, isn’t the question of the legal character attached to soft law irrespective of its mandatory force? As Daniel Bodansky states:

the issue of hard versus soft law . . . is only one of many dimensions along which international norms vary. Arguably, too, it is not the most important dimension, given the lack of enforcement mechanisms or judicial decision-making, which ordinarily make the distinction between law and non-law so important . . . [but] [d]espite the infrequency of enforcement or judicial application, a norm’s status as law still matters because relevant actors think it does.²⁸

The reader might be disoriented by some choices in definitions or categorizations, regarding for example the choice of two different categories for environmental quality

21. Abi-Saab, *supra* note 9, at 60.

22. Martti Koskeniemi, *The Fate of Public International Law: Between Techniques and Politics*, 70 MOD. L. REV. 1 (2007).

23. Manfred Lachs, *Some Reflections on Substance and Form in International Law*, in TRANSNATIONAL LAW IN A CHANGING SOCIETY: ESSAYS IN HONOR OF PHILIP C. JESSUP 99, 100 (1972).

24. ALAN BOYLE & CHRISTINE CHINKIN, *THE MAKING OF INTERNATIONAL LAW* 25 (2007).

25. *See also* Jutta Brunnée, *COPing with Consent: Law-Making Under Multilateral Environmental Agreements*, 15 LEIDEN J. INT’L L. 6 (2002).

26. BODANSKY, *supra* note 1, at 102-107.

27. *Id.* at 99.

28. *Id.* at 107.

standards and performance standards²⁹ — the latter can also be seen as being merely a specific sub-category of environmental quality standards — or else concerning the difference between rules and standards.³⁰ The definition of a standard given at this particular passage of the book, explicitly based on analyses of domestic law, in our view does not render the polysemy attached to this notion in international law. Daniel Bodansky himself sometimes blends the different meanings (or connotations) the term can have.³¹ Regarding content, ‘standard’ refers to detailed, technical norms — those used as a basis for conventional developments in the oil pollution field but also the ISO’s — as well as loose, behavior standards. Regarding form and legal weight, ‘standards’ in international law usually refer to a non-mandatory kind of source of norms and is often used to describe sets of norms adopted by non-state actors, regardless of their vague or detailed content and non-binding or binding consequences. For example, the fact that states have complied with some ISO standards can play a decisive role in determining the legality of the measures they adopted under the law of the World Trade Organization,³² while guidelines such as the Equator Principles barely result in binding consequences for the financial institutions who voluntarily adhered to them.

We also could not entirely agree on the definition of general principles, which in our opinion is confusing.³³ Among the sources of international law, Article 38 of the Statute of the ICJ refers to “the general principles of law recognized by civilized nations.”³⁴ The expression is both anachronistic and enigmatic. It is acknowledged that general rules of law form an autonomous source of international law, independent from any customary or conventional recognition. These are principles set *in foro domestico*, existing in national law and common to most of the different national legal systems. Auxiliary by nature and supposed to fill in the gaps of conventional or customary law, these principles *a priori* play a more important role in new fields such as environmental protection than in traditional fields. And yet, they have played only a very marginal part in the development of IEL.³⁵ As far as the principles sanctioned by jurisprudence are concerned, one can mention the prohibition of the abuse of rights and the principle of good faith, or the principle according to which any violation of a commitment entails an obligation to compensate. *Quid* then of the principles of international environmental law? The expression is often used, for example, with regards to the precautionary principle, the polluter-pays principle or even the principle of common but differentiated responsibilities. But it seems to us that these principles have no autonomy. It is thus important to examine their formal sources which give them substance as a rule of law on a case by case basis. These principles can be conventional (many conventions refer to them). To have a larger impact their nature as a customary rule, or even a general principle of law, would have to be recognized. And though such nature is debated, it does not preclude them

29. *Id.* at 76-77.

30. *Id.* at 105-06.

31. *Compare id.* at 105-106, *with id.* at 133-34.

32. LES ENJEUX DE LA NORMALISATION INTERNATIONALE: ENTRE ENVIRONNEMENT, SANTE ET COMMERCE INTERNATIONAL (Estelle Brosset & Eve Truilhé-Marengo eds., 2006).

33. BODANSKY, *supra* note 1, at 99, 199.

34. Statute of the International Court of Justice art. 38, June 26, 1945, 59. Stat. 1055.

35. PATRICIA BIRNIE ET AL., INTENTIONAL LAW AND THE ENVIRONMENT 27 (2d ed. 2009).

from influencing state practice and the negotiation of treaty rules, not to mention, more or less implicitly, decisions of international tribunals.³⁶

Having described the plurality of actors in international environmental decision and law-making processes, Daniel Bodansky usefully recalls why and how international environmental law emerged despite strong obstacles to international cooperation. The demonstration however is lacking an important aspect which could be located half-way between the explanations on the emergence of international environmental norms³⁷ and the discussion on negotiation, design and strategy for building a treaty regime over time.³⁸ We believe the “norm cascade”³⁹ idea cited by Daniel Bodansky deserved further exploration. Interactions between environmental norms are mostly addressed as interactions between domestic law and international law. In our opinion, the book pays too little attention to the major issues of the coherence of — and interplay in⁴⁰ — international environmental law and its articulation with other fields of international law, that is to say the fragmentation of an “archipelagic” international law.⁴¹

Regarding the first angle, we believe conceptual bridges existing between different environmental legal regimes could have been the subjects of further consideration. Legal developments that take place in a legal regime relating to a specific issue can significantly influence the emergence, design and development over time of international environmental norms relating to another specific environmental issue. Similarly, we would have liked to see more developments on the relationship between global and regional regimes in the emergence, design and development of international environmental norms, but certainly Europeans are more sensitive to the issue of regional level/international level normative linkages.

Under the second angle, the relationships of IEL with other branches of international law in a fragmentation context, environmental matters tend, in a particularly intrusive fashion, to overflow and ‘contaminate’ large sections of international law, due to its horizontal dimension. The main vector of this contamination is the principle of sustainable development, which campaigns for the integration of an environmental dimension in all public policies. This explains the very strong presence of environmental considerations not only (and rather logically) in fields pertaining to natural resources and habitats (seas, rivers, fishing, etc.) but also beyond in international economic law (trade and investment) and human rights. In turn, normative developments in fields other than environmental law can contribute to the design and development over time of environmental norms. From this point of view, the role of international judicial bodies in linking different legal regimes could have been highlighted.

36. *Id.* at 28 (“The precautionary principle . . . has influenced state practice, the negotiation of treaties, and the judgment of international courts.”).

37. BODANSKY, *supra* note 1, ch. 7.

38. *Id.* ch. 8.

39. *Id.* at 148.

40. See ORAN R. YOUNG, *THE INSTITUTIONAL DIMENSIONS OF ENVIRONMENTAL CHANGE: FIT, INTERPLAY, AND SCALE* (2002).

41. Helene Ruiz Fabri, *Le droit international entre prudence et espérance*, in *REGARDS D'UNE GENERATION DE JURISTES SUR LE DROIT INTERNATIONAL* 335 (2008).

Making use of a political science approach, Daniel Bodansky clearly and broadly addresses the following issue: why do states negotiate and accept international agreements?⁴² Daniel Bodansky's explanations are quite helpful to understand, for example, Canada's recent decision to withdraw from the Kyoto Protocol on climate change because it didn't manage to comply with it and in many respects the cost of compliance was seen as much higher than the benefits attached to being a party to the Protocol. Quibbling about details, one can wonder why the author does not mention in the "Cost and Benefits of Treaty Participation" paragraph the strong incentive offered to developing countries *via* improved access to international financial (and technical) assistance — access to funds and capacity-building offers that are specific to a convention — which is often correlative to entering into an environmental agreement. It is all the more puzzling given that Daniel Bodansky is utterly familiar with this kind of incentive, which he mentions later.⁴³

Another important range of issues nicely analyzed by Daniel Bodansky deals with how and why states implement their commitments and the question of international law's effectiveness. Here the book is really enlightening, the author taking stock of the state of the art, including in the field of international relations. Because the tasty analysis makes one want seconds, we will take the liberty of expressing two regrets and a question.

First, the author does not render the richness of the issues raised by states' responsibility or liability, which interest is mostly presented as lying in its adjustment-compensation properties.⁴⁴ As Daniel Bodansky notes, states' liability is not easily triggered, especially in environmental matters where enforcement means are weak or lacking, causation might be hard to prove, obligations are based on prevention rather than sanction and compensation means might not be suitable for some kinds of environmental harm.⁴⁵ However, we believe that there are areas at crossroads of other fields of international law where the part played by international environmental norms could have been further discussed. For example, the development of environmental procedural rights, blending environmental law with human rights-based approaches, have paved the way to better access to justice and justiciability of international environmental norms, using human rights tribunals as a pathway to international liability of states. In that respect the case law of human rights *fora* — whether in the framework of the European Convention on Human Rights, the Inter-American Human Rights system or the African Charter on Human and People's Rights — have been remarkably creative.⁴⁶ More broadly, the book's analysis on reaction to non-compliance focuses on international *judicial interstate* dispute settlement and treaty-based non-compliance procedures and does not in our opinion actually show the variety of existing and possible legal or quasi-legal accountability procedures which can be triggered by affected people, despite the fact that some are mentioned in passing in other parts of the book (the

42. BODANSKY, *supra* note 1, at 152.

43. *Id.* at 182, 244.

44. *Id.* at 82.

45. *Id.* at 82.

46. See e.g., Francesco Francioni, *International Human Rights in an Environmental Horizon*, 21 EUR. J. INT'L L. 41 (2010); Inter-American Commission on Human Rights, *Indigenous and Tribal Peoples' Rights over Their Ancestral Lands and Natural Resources: Norms and Jurisprudence of the Inter-American Human Rights System*, 35 AM. INDIAN L. REV. 263 (2010-2011).

North American Agreement on Environmental Cooperation's⁴⁷ or the World Bank's Inspection Panel).⁴⁸ Some of them, as the 'specific instances' mechanism set up by the OECD Guidelines for Multinational Enterprises, indeed offer the stunning (that is, stunning to an international law scholar) possibility to draw (non-legally binding) consequences from non-compliance with internationally-defined environmental norms, although no international responsibility or liability mechanism can be set in motion in particular because of the nature of the transnational actors involved (international organizations, multinational enterprises, etc.). Besides, we are not fully convinced by the author's choice to discuss treaty-based non-compliance procedures only in the "Responding to non-compliance" section. We believe such a choice does not sufficiently highlight that non-compliance procedures have an inherent deterrent and preventive function, consequently failing to expose part of their specificity and originality.

Second, and more generally, the shift from an international law of 'good neighborhood relations' — with a tendency to bilateral law, which is territorial and founded on the reciprocity of rights and obligations⁴⁹ — to a global, multilateral international law where obligations are agreed upon in the name of a common interest constitutes a real revolution in terms of technique, procedures and legal concepts. It is particularly true regarding secondary rules; 'secondary' being used here not according to the distinction H.L.A. Hart makes and Daniel Bodansky uses⁵⁰ — primary rules being regulatory and secondary rules being constitutive — but referring to the distinction between rules provided for by primary sources (treaties) and rules provided for by secondary sources (e.g., instruments adopted by treaty bodies such as COPs' decisions). It is an interesting evolution the book maybe does not highlight enough.

Let us end with a question related to the targeted audience. Beyond the very nicely crafted explanation given in the preface, the book is obviously intended for readers who are not absolutely familiar not only with international environmental law but also with international law more broadly. Having in mind that we might not be good judges of this, it appeared to us that in some respects some developments might be a little cryptic to an audience with a patchy knowledge of international and international environmental law's functioning. For example, the "Who's who in the legal process" chapter gives key elements to understand some assertions which appear earlier in the book. We then wonder whether it wouldn't have been useful to provide additional, selective and cursory "who's who" insights in the developments relating to the sources of international environmental norms and law. One can think in particular of further explanations on the specific structure of MEAs and role of their COPs.

These remarks must not mask that Daniel Bodansky's *The Art and Craft of International Environmental Law* is an impressive piece of work, at the same time rich, clear, and pedagogic, nor Daniel Bodansky's own art and craft in x-raying international environmental

47. BODANSKY, *supra* note 1, at 235.

48. *Id.* at 129.

49. See Peter H. Sand, *The Evolution of International Environmental Law*, in THE OXFORD HANDBOOK OF INTERNATIONAL ENVIRONMENTAL LAW 31 (Daniel Bodansky et al. eds., 2007) (Early treaties were "typical territorial regimes of reciprocity.").

50. BODANSKY, *supra* note 1, at 88.

Book Review: Daniel Bodansky, The Art and Craft of International Environmental Law

law with a quite vivid and lively style. *The Art and Craft of International Environmental Law* is a genuine tool for students as well as practitioners, and manages to be a handbook while being original and individual as well.