

BOOK REVIEWS

Advanced Introduction to International Environmental Law, by Ellen Hey
Edward Elgar, 2016, 200 pp, £75 hb, ISBN 9781781954560

With *Advanced Introduction to International Environmental Law*, Ellen Hey provides an engaging and concise overview of topics that are prominent in the contemporary discourses of international environmental law (IEL). Published as part of the Elgar Advanced Introductions series, this book serves the purpose of identifying principles, instruments and mechanisms of IEL as well as relating key legal questions to broader socio-economic and political contexts. In particular, this book can be read under the prefix of finding a way to consider the socio-ecological system in IEL. Hey offers insights that stimulate international environmental lawyers and policy makers to think more critically in the Anthropocene. However, it remains an introductory text which touches on various aspects of IEL but does not develop a central argument based on an in-depth analysis.

Readers of *Advanced Introduction to International Environmental Law* will positively experience Hey's skill in bringing together two fundamental aspects of IEL in a very compact form. Firstly, the book vividly explains how global interdependencies are shaping IEL. Hey depicts interdependencies between different systems of the overall Earth system. She illustrates the connections between ecosystems, between social systems, and between social, economic and ecological systems. For example, economic incentives foster global trade in natural resources such as oil, gas, and agricultural products. The transportation, generation and use of these products can have a negative impact on the environment. Transnational movements of indigenous people or environmental groups also reflect the interconnectedness of people around the globe. Hey's explanations help international environmental lawyers and policy makers in understanding the linkages between various systems and their complex relationships with IEL in a more profound way. Hey's book will have long-term relevance as it demonstrates to undergraduate and graduate students the significance of systems thinking that goes beyond a reductionist understanding of IEL.

Secondly, the book takes power relations into account. Hey is attuned to structural and actor-related inequalities in terms of resource distribution and bargaining power. She guides the reader through the evolutionary stages that have constructed IEL in the way we encounter it today. Most crucial in this regard is Hey's recognition that colonial relationships of the past are continued in the so-called North-South conflict, which is characterized by political tensions between developed and developing countries. With empirical examples drawn from the design and operation of multilateral environmental agreements, Hey demonstrates that IEL still does not give sufficient attention to developing countries. Hey further explains that she does not consider IEL simply to be a politically neutral, technical legal field because she

includes a critical discussion of the distributive justice and substantive and procedural fairness dimensions of IEL. In so doing, she shows that questions of justice and inequalities in the field of IEL are of continuous societal relevance.

In addition to the above two features, any reader would benefit from Hey's discussion of the changing focus from the protection of single species to the consideration of entire ecosystems. By illustrating three stages of development, Hey clarifies what IEL has been focusing on, and why. According to Hey, the initial view of states in the 1960s was that, in order to protect and conserve a species, its environment needed to be kept clean and free from harmful substances. A decade later, in the second stage of development, regulatory regimes began to emerge, followed by the creation of regimes focusing on trade in hazardous substances. These developments finally led to the third and current stage. At present, as Hey asserts, we face the challenging task of matching ecosystems and ecosystem-based governance in contemporary IEL. Hey supports her argument by pointing to several relevant documents, such as the 2005 Millennium Ecosystem Assessment,¹ where the anthropocentric and monetary terminology of ecosystem services prevails over ecosystems. Hey further stresses that ecosystem-based governance is indeed incorporated in IEL, but often in a piecemeal fashion. She acknowledges efforts to implement the ecosystem approach in law: the 2010 Strategic Plan for Biodiversity 2011–2020² under the Convention on Biological Diversity (CBD),³ which emphasizes the difficulties in operationalizing the concept, and the Ecosystem Approach to Fisheries (EAF)⁴ of the United Nations (UN) Food and Agricultural Organization (FAO), which develops practical procedures for its implementation.

Another positive feature of *Advanced Introduction to International Environmental Law* is its broad elaboration of specific legal instruments in IEL. Hey explains how legal principles frame the legal discourse, negotiations, interpretation and application of treaties, customary international law and regimes. In this regard, the book makes clear that the principles of sustainable development and common concern of humankind acknowledge the complex linkages between humans and the socio-economic dimensions, including space and time. Hey critically concludes, however, that environmental law principles fail adequately to address the linkage between humans and the environment: 'how humans and their socio-economic systems relate to the environment is not conceptualized by these principles, beyond their anthropocentric implications' (pp. 85–6). Hey's suggested solution is to include ethical reflections in conceptualizing our relationship with the Earth systems.

¹ Millennium Ecosystem Assessment, *Ecosystems and Human Well-being: Synthesis Report* (World Resources Institute/Island Press, 2005), pp. 1–24, available at: <http://www.millenniumassessment.org/documents/document.356.aspx.pdf>.

² CBD COP-10, 18–29 Oct. 2010, Nagoya (Japan), Decision X/2, 'The Strategic Plan for Biodiversity 2011–2020 and the Aichi Biodiversity Targets', UN Doc. No. UNEP/CBD/COP/DEC/X/2, 29 Oct. 2010, available at: <https://www.cbd.int/doc/decisions/cop-10/cop-10-dec-02-en.pdf>.

³ Rio de Janeiro (Brazil), 5 June 1992, in force 29 Dec. 1993, available at: <http://www.cbd.int>.

⁴ S.M. Garcia et al., 'The Ecosystem Approach to Fisheries: Issues, Terminology, Principles, Institutional Foundations, Implementation and Outlook', FAO Fisheries Technical Paper No. 443, 2003, available at: <http://www.fao.org/3/a-y4773e.pdf>.

A striking characteristic of the book is its relatively broad examination of the relationship between IEL and other branches of international law. According to Hey, IEL not only shares rules of public international law—such as the law of responsibility, the law of treaties and the law on the settlement of disputes – but is also characterized by synergies with and differences from other branches of international law. In this context, the book states that discourses in IEL are dominated by three main fields of interrelation: human rights law, the law of armed conflict, and trade and investment law. It is unclear why the book omitted regional economic integration,⁵ which is undeniably another key subject area with which IEL interacts.

One aspect of the book which is open to improvement is its superficial consideration of fragmentation, this being a prominent topic in the IEL literature. The overlaps and differences between IEL, public international law and other subject areas are highly relevant for gaining a broader understanding of the complexities in this field. In fact, the classification of IEL in the various legal systems is crucial for its definition. Some scholars view IEL as a branch of public international law,⁶ whereas others think of it as an autonomous legal system with its own sources and mechanisms, and which is relatively independent from public international law;⁷ others again view IEL as a compilation of the entire corpus of international law, public and private, relevant to environmental problems.⁸ Hey's attention to these aspects is too cursory. In the absence of a clear definition of what IEL actually means in the context of the book, she merely explains what it deals with, namely the 'negative impacts that humans have on the environment with the objective of protecting and conserving the environment' (p. 1).

Advanced Introduction to International Environmental Law could benefit also from a discussion of the transnational dimension of IEL. Global administrative law, considered the legal equivalent of the global governance concept, could have furthered the reader's understanding of the role of transnational administrative bodies, including informal groups of officials and international organizations. As these bodies perform administrative functions that are only indirectly controlled by national governments, there is a significant shift in regulatory decisions from the domestic legal sphere to the global level. Thus, national environmental regulators who deal with biodiversity conservation or greenhouse gas emissions, for example, are part of both national and global administration.⁹ A further consideration of these developments could have made this book significantly more insightful.

This is a reference book for a broad variety of both legal scholars and political scientists who operate in the field of IEL and global environmental governance. Because of its strong references to the socio-economic dimension, it also makes valuable reading for economists. The book is especially useful for early career

⁵ D. Shelton & A.C. Kiss, *A Guide to International Environmental Law* (Brill, 2007), pp. 225–36.

⁶ *Ibid.*

⁷ D. Bodansky, 'Does One Need To Be an International Lawyer To Be an International Environmental Lawyer?' (2006) 100 *Proceedings of the American Society of International Law*, pp. 303–7.

⁸ P. Birnie & A. Boyle, *International Law and the Environment* (Oxford University Press, 2009).

⁹ B. Kingsbury, N. Krisch & R.B. Stewart, 'The Emergence of Global Administrative Law' (2005) 68(3–4) *Law & Contemporary Problems*, pp. 15–61.

scholars who wish to acquire an advanced overview of IEL. The simple language and clearly elaborated argumentation help to explain the most relevant aspects of the field. For more advanced scholars, the book would be useful to refresh their knowledge and bring them up to date. It is a valuable work for understanding continuities and challenges in IEL and a clear affirmation of the relevance of socio-ecological system theory for law.

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Environmental Law and the Ecosystem Approach: Maintaining Ecological Integrity through Consistency in Law, by Froukje Maria Platjouw
Earthscan from Routledge, 2016, 220 pp, £85 hb, ISBN 9781138183131

Environmental law has, perhaps by necessity, lagged behind scientific understandings of the natural world. Nevertheless, there has been a slow but sure shift from legal instruments that adopt species-based approaches to conservation¹ to more holistic approaches at the level of ecosystems.² During the 1980s, ecosystem managers began to adopt an ecosystem approach in the management of ‘eco-social’ systems.³ By 2000, in Decision V/6 of the 5th Conference of the Parties (COP-5), the Convention on Biological Diversity (CBD)⁴ extended understanding of the ecosystem approach beyond a mere strategy to conserve biodiversity at the level of ecosystems; the ecosystem approach was instead envisaged as a mode of governance. Nevertheless, the ecosystem approach remains a contested concept and its precise legal status and content remain unclear.⁵

¹ Convention on the Conservation of Migratory Species of Wild Animals, Bonn (Germany), 23 June 1979, in force 1 Nov. 1983, available at: <http://www.cms.int>; Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), Washington, DC (United States (US)), 3 Mar. 1973, in force 1 July 1975, available at: <https://www.cites.org>.

² Convention on Biological Diversity (CBD), Rio de Janeiro (Brazil), 5 June 1992, in force 29 Dec. 1993, available at: <http://www.cbd.int>; Convention on the Law of Non-Navigational Uses of International Watercourses, New York, NY (US), 21 May 1997, in force 17 Aug. 2014, available at: <http://www.unwatercoursesconvention.org>. For a detailed analysis of the range of instruments and sectors in which management at the level of ecosystems and the ecosystem approach has been considered see V. de Lucia, ‘Competing Narratives and Complex Genealogies: The Ecosystem Approach and Environmental Law’ (2015) 27(1) *Journal of Environmental Law*, pp. 91–117.

³ D. Waltner-Toews & J. Kay, ‘The Evolution of an Ecosystem Approach: The Diamond Schematic and an Adaptive Methodology for Ecosystem Sustainability and Health’ (2005) 10(1) *Ecology and Society*, Art. 38 (online), available at: <http://www.ecologyandsociety.org/vol10/iss1/art38>.

⁴ CBD COP-5, Decision V/6 ‘Ecosystem Approach’, UN Doc. No. UNEP/CBD/COP/5/23, 22 June 2000, Annex III.

⁵ De Lucia, n. 2 above, p. 94.