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Review: International Environmental Law: The Practitioner's Guide to the Laws of the Planet

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THE INTERNATIONAL LAWYER
A TRIANNUAL PUBLICATION OF THE ABA/SECTION OF INTERNATIONAL LAW

**Review: International Environmental Law:
The Practitioner's Guide to the Laws of the
Planet, Roger R. Martella, Jr. and J. Brett
Grosko (Eds.) American Bar Association,
Section of Environment, Energy and Resources
(2014)**

ANASTASIA TELESITSKY*

When John Donne penned his metaphor “no man is an island” in 1624,¹ he could not have anticipated how connected we have become in the 21st century. Today, contemporary human communities spanning the globe experience simultaneously both the positive externalities of globalization, in the form of the democratizing internet revolution, along with the negative externalities of globalization, in the form of the extraction of conflict minerals to build our electronics and electronic waste. As individual citizens, we are part of an increasingly complex web of seemingly small and discrete policy decisions with larger and sometimes tragic transboundary consequences. An increasing number of governments and institutions recognize that individual political and economic decisions have resulted in globally cumulative environmental consequences that necessitate collective action in order to avoid or mitigate long-term harm to global well-being.

It is within this context of increasing connectivity that the American Bar Association's Section of Environmental Energy and Resource's recent publication *International Environmental Law: The Practitioner's Guide to the Law of the Planet (IEL: The Practitioner's Guide)* should be read.² If increased connectivity has been the source of some of our current global environmental challenges such as the spread of invasive species, the ability to connect across great distances can also be a source for devising long-term solutions to addressing chronic transboundary issues such as ocean acidification. As a collaborative project, the *IEL Practitioner's Guide* demonstrates this positive power of connectivity with fifty-eight contributors located in twenty-six countries including both the Global North

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1. JOHN DONNE, *Meditation 17*, in DEVOTIONS UPON EMERGENT OCCASIONS (Cosimo Classics 2007) (1624).

2. INTERNATIONAL ENVIRONMENTAL LAW: THE PRACTITIONER'S GUIDE TO THE LAWS OF THE PLANET (Roger Martella & J. Brett Grosko eds., 2014) [hereinafter IEL: THE PRACTITIONER'S GUIDE].

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and the Global South, as well as contributors from an array of professional backgrounds including intergovernmental organizations, governmental agencies, private firms, and the academy.

IEL: The Practitioner's Guide offers a practical and accessible handbook of fifty concise chapters covering the role of international environmental law in the larger field of law, key international environmental legal developments, and comparative national environmental laws. The book should become part of the reference library for any general practice firm because international environmental law can no longer be regarded as an arcane subject matter of interest to a clique of diplomatic experts. As the book's general editors, Roger Martella and J. Brett Grosko, observe, the rapid globalization of markets "have thrust international environmental law issues from strictly a foreign arena onto the front doorstep of attorneys practicing environmental law from regional cities to small manufacturing towns."³

Today to be a responsible practitioner of environmental law, one must also have a working knowledge of both international environmental law and comparative law. As Robert Percival and Tseming Yang observe in their contributions to the volume, domestic environmental law does not exist in a vacuum because of the emergence of "global environmental law."⁴ More and more regularly, international or regional environmental law informs the content of domestic environmental law; or, one domestic environmental regime will borrow standards from another domestic environmental regime. For example, in the United States some environmental statutes directly incorporate international treaty requirements.⁵ The Registration, Evaluation, Authorization, and Restriction of Chemicals (REACH) Legislation of the European Union to regulate chemical production now impacts the substance of chemical production legislation outside of Europe.⁶ Increasingly, transnational laws covering the conduct of private individuals are influencing laws, such as the influence of multi-stakeholder Extractive Industries Transparency Initiative on the development of the U.S. Dodd-Frank Act on financial reform.⁷

Just as practitioners must be aware of the variety of sources of law that will govern their clients' actions both at home and abroad, so too must practitioners representing globally mobile clients be prepared to respond to litigation across a variety of jurisdictions even where the underlying activities originate in another jurisdiction. Charles di Leva offers a valuable chapter for practitioners, reminding counsel that litigation can arise over failure

3. *Id.* at xlix.

4. Robert Percival, *The Globalization of Environmental Law*, in *IEL: THE PRACTITIONER'S GUIDE*, *supra* note 2, at 3-11; Tseming Yang, *The Relationship between Domestic and International Environmental Law*, in *IEL: THE PRACTITIONER'S GUIDE*, *supra* note 2, at 13-21.

5. *See, e.g.*, Marine Protection, Research and Sanctuaries Act of 1972, 33 U.S.C. § 1412(a) (requiring application of standards under the London Convention on Dumping); Clean Air Act, 42 U.S.C. § 7671(6) (requiring the term "consumption" to be "construed in a manner consistent with the Montreal Protocol").

6. *See, e.g.*, [Order No. 7, Measures for Environmental Management of New Chemical Substances 2010] (promulgated by the Ministry Env't Prot., Jan. 19, 2010, effective Oct. 15, 2010), *available at* http://www.rsjtechnical.com/images/Documents/China_New_Chemical_Substances_Jan10.pdf (China); Act on the Registration and Evaluation of Chemicals, Act No. 11789, Apr. 20, 2013 (S. Kor.).

7. Corporate members of the Extractive Industry Transparency Initiative are expected to disclose company payments to governments associated with resource extraction. EITI INT'L SECRETARIAT, *THE EITI STANDARD 28* (Sam Bartlett & Dyeke Rogan eds., 2015), *available at* https://eiti.org/files/English_EITI_STANDARD.pdf; Dodd-Frank Wall Street Financial Reform and Consumer Protection Act, Pub. L. No. 111-203, 124 Stat. 1376 (2010), s. 1504 (amending Securities Exchange Act of 1934, 15 U.S.C. § 78m).

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to comply with standards not just of a nation, but also of an international financial institution, depending on how a project has been financed.⁸

For a practitioner with multinational clients, or a client who relies upon an international supply chain, the remainder of the book offers a valuable reference guide. Expert authors describe the international regime in eleven different areas including: (1) air and climate change; (2) water; (3) handling, treatment, transportation, and disposal of hazardous materials; (4) waste and site remediation; (5) response to emergencies; (6) natural resource management and protection; (7) management and recovery of natural resource damages; (8) protection of species; (9) environmental review and decision making; (10) transboundary pollution; and, (11) civil and criminal enforcement and penalties. These eleven different areas of law are then used to structure chapters that cover a selection of nations that include the top fifteen nations in terms of gross domestic product. Additional chapters provide insight into the governance of the European Union, North America, Central America, South America, Southeast Asia, and the Arctic.

This book makes a valuable contribution in providing concise descriptions of existing environmental legal regimes. For a private practitioner, it offers a quick checklist of what laws might govern a particular transaction in specific jurisdictions, and citations to these laws. For a government legislative or administrative practitioner seeking to reform existing laws, the volume offers a cornucopia of approaches that might be adopted to protect the environment. For a member of the judiciary, the volume offers an easy to explore source of reference for comparative law.

While the book is highly informative, the only suggestion for possible future editions would be to structure the book more tightly around the eleven thematic areas. The text would be strengthened if, rather than having separate chapters covering each nation's environmental law, the selected nations' approaches to a thematic area were, instead, contained within those thematic areas' respective chapters. This structure would make it easier for an audience to compare and contrast the variety of approaches taken by the States. Given that fifty-eight authors were operating in twenty-six countries to produce this excellent volume, this suggestion would have required an even greater degree of coordination, which would be difficult to achieve with the busy schedules of authors seeking to complete this project in only eighteen months.

Perhaps, a second edition to this handbook could seek to create a larger conversation among the authors who are contributing their expertise on national, regional, and international environmental frameworks. For example, as South American authors learn about African approaches and North American authors learn about Asian approaches, perhaps new ideas will be transplanted, or previously overlooked points of legal convergence will be identified. Even though practitioners of environmental law may have unique political and cultural considerations depending on where they practice, every State can benefit from an open-minded exchange of ideas. As Justice Joseph Story, one of the founders of the U.S. legal system once remarked about the United States: "There is no country on earth, which has more to gain than ours by the thorough study of foreign jurispru-

8. Charles di Leva, *How to Approach an International Environmental Law Question*, in IEL: THE PRACTITIONER'S GUIDE, *supra* note 2, at 23-32.

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dence. . . . Let us not vainly imagine, that we have unlocked and exhausted all the stores of juridical wisdom and policy.”⁹

IEL: The Practitioner’s Guide provides a crucial lesson about the role of international environmental law in a world where even our fundamental concepts of time and space are rapidly evolving. John Donne reminds us that we are “a part of the main.”¹⁰ This is true for law also. As individual citizens identified in part by our nationalities, we belong to a legal system that extends beyond our own national laws—a global environmental legal system. To negotiate this emerging legal system will require new skills and knowledge on the part of practitioners; *IEL: The Practitioner’s Guide* provides an excellent introduction to the content of global environmental law.

9. Joseph Story, Progress of Jurisprudence, Address at the Suffolk Bar on their Anniversary (Sept. 4, 1821), in *THE MISCELLANEOUS WRITINGS, LITERARY, CRITICAL, JURIDICAL AND POLITICAL OF JOSEPH STORY* 405, 434-35 (James Munroe & Co. ed., 1835).

10. Donne, *supra* note 1.