

## Book Reviews

**Bharat H. Desai (ed.): Institutionalizing International Environmental Law**

Transnational Publishers, 2004, XIV + 378 pages, ISBN 1-57105-313-1

With his book on institutionalizing international environmental law *Bharat H. Desai* has made a contribution to an important process regarding the development of international environmental law that is worthwhile reading for researchers with an interest in this branch of public international law, despite some shortcomings that are considered in more detail in the following.

The author has already dealt with aspects of the issue of institutions in international environmental law in some of his articles. The book addresses the subject in a more comprehensive manner, focussing on interdependencies between international law and institutions as well as between different institutions with environmental mandates.

It consists of four parts with seven chapters altogether. Part I refers to law and institutions in a more general sense of meaning, Part II is headed "international environmental law and institutions". This part forms, according to the foreword by the author, the "heart of the study". Part III deals with the future of international environmental institutions and Part IV contains, as appendices to the study, the constituent instruments of three selected international environmental institutions, namely the United Nations Environment Programme (UNEP), the Commission on Sustainable Development (CSD) and the Global Environment Facility (GEF).

Furthermore, the work includes an extensive bibliography with both primary and secondary sources that researchers will find useful.

Chapter one examines from a more general perspective the relation between law and society and serves as an introduction to the topic by briefly explaining how the author understands the terms "law", "soci-

ety”, “institution” and “institution building”, as well as these expressions’ interrelations and respective functions. While a comprehensive definition of each term, let alone interrelations and functions, would merit an extensive elaboration on its own, *Desai* manages to extract the essence to serve the purpose of his study.

The second chapter describes both the historical and the modern institution-building process on the international level in more detail. A focus is set on the relationship between state sovereignty on the one hand and interdependence and need for institutionalized co-operation between states on the other. *Desai* emphasizes the complexity of the process and the difficulties in balancing interests.

It is regrettable that some issues of specific dogmatic relevance for the development of international law and the rules governing and resulting from international institutions have not been elaborated in more depth, but are touched upon rather briefly. In chapter two this criticism applies in particular to what *Desai* calls “internal law” of international organizations and institutions and “co-ordination”.

Chapter three, as the beginning of the central second part of the book, starts by explaining the development of international environmental law as a distinct branch of public international law. The chapter continues by describing its changing character in the course of its development from a pre Stockholm period over the United Nations Conference on the Human Environment, Rio and other more or less outstanding events to, finally, the Johannesburg Summit in 2002.

While the first three chapters are of a rather descriptive nature, chapter four provides the reader with an analysis of environmental law-making in an international context. It covers the issue of a proliferation of the number of environmental agreements, the evolution of soft law and its characteristics as well as “centralized legalization” and treaty-making. Why the author separates his considerations of a “thickening web of multilateral environmental agreements” and what he calls a “treaty making approach” is not quite evident. While the analysis of the relevant issues is generally very thoughtful and in some cases, e.g. in relation to the characterization of soft law and the “softness” of hard law, very valuable, the chapter, in regard to its different paragraphs, seems to lack structure. Furthermore, as regards some issues, e.g. the approaches concerning a “centralized legalization”, one wishes that *Desai* had elaborated a little more deeply on these questions and their relevance for the process of institutionalization of international environmental law, *inter alia* in regard to the question whether standard-setting by institutions and treaty-making can be qualified as law-making and how a

centralized concept of legalization would change relevant approaches to law-making.

Chapter five finally goes to the core of the subject: international environmental institutions. *Desai* emphasizes and discusses the role of the General Assembly before he goes on to the general significance of international environmental institutions and their relevance as tools and as catalysts for law-making. The emphasis on the role of General Assembly resolutions as constituent instruments for international environmental institutions seems overrated given the fact that *Desai* can state only UNEP and the CSD as examples for such a role. A distinction between international environmental institutions in general and international organizations in terms of a definition and legal characterization would have been desirable. In fact, despite general definitions and characterizations of international environmental institutions, it becomes less clear what the author understands by the term the further he elaborates on functions and interdependencies of institutions.

Under the heading “blueprints for strengthening international environmental institutions” in chapter six the author concentrates on the issues of how to revitalize UNEP, establish a new environmental specialized agency or potentially revive the Trusteeship Council of the United Nations as a debating forum giving guidance and supervising international co-ordination in environmental issues. In this regard it is debated whether a reformed UNEP with enhanced status and authority may result in a United Nations “specialized agency” designated as the “UN Environment Protection Organization”.

*Desai* thoroughly examines UNEP’s current role and potential reforms in the light of an effective organization of environmental institutions. It is notable and helpful for researchers in this field of law that institutions that are otherwise rarely discussed in the context of environmental institutions such as the UN Trusteeship Council are analyzed in view of their potential for the restructuring of international environmental institutions. Furthermore, the author makes useful suggestions as to overcome aversion against a new environmental organization with a comprehensive and strong mandate. As opposed to the author’s declared objective this chapter, instead of the ones forming Part II of the book, seems to be the real core of the study.

In his conclusions (chapter seven), *Desai* summarizes his considerations in regard to the linkage of law and institutions and the relevance of the institutionalizing process in international environmental law and – again – calls for a centralized environmental institution.

All together the book would have benefited from a slightly clearer structure. While at times verging on over simplifying the subject, the book, written in clear and straightforward language, is on the whole, a valuable contribution to better understanding the development of international environmental law and its institutions.

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