

## BOOK REVIEW

*Environmental Negotiator Handbook* by Alexandre Timoshenko  
Kluwer Law International, 2003. Pp. xiv, 541. \$162.00

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A detailed handbook on negotiating international environmental treaties is arguably overdue. International environmental law, which is primarily comprised of such agreements, blossomed into adulthood over a decade ago,<sup>1</sup> and its maturation spans the entire twentieth century. The growth of this increasingly significant area of law readily divides into three periods.<sup>2</sup> The first of these periods is one of nonexistence. Concerns about the degradation of our planet's resources were absent from state agreements until the United States and Great Britain agreed in 1909 that they would not pollute one another's waters.<sup>3</sup> This agreement failed to open any floodgates. Instead, the following sixty-year period witnessed a mere trickle of agreements containing any environmental components.<sup>4</sup> The formation of the United Nations Environment Programme (UNEP) in 1972, however, marked the beginning of the modern era of international environmental law.<sup>5</sup> Nations finally began to understand that environmental degradation fails to recognize political boundaries, and they responded with an astounding proliferation of conventions addressing a variety of environmental concerns,<sup>6</sup> including ozone depletion<sup>7</sup> and species

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1. "Adulthood" in this sense means that environmental law is firmly established in the still evolving field of international law. This view acknowledges that there is still significant room for augmentation. See John Knox, *Assessing the Candidates for a Global Treaty on Transboundary Environmental Impact Assessment*, 12 N.Y.U. ENVTL. L.J. 153 (2003); Laura Thoms, *A Comparative Analysis of International Regimes on Ozone and Climate Change with Implications for Regime Design*, 41 COL. J. TRANSNAT'L L. 795 (2003).

2. See Edith Brown Weiss, *International Environmental Law: Contemporary Issues and the Emergence of a New World Order*, 81 GEO. L.J. 675, 675-79 (1993) [hereinafter *Environmental Law: Contemporary Issues*].

3. Treaty Between the United States and Great Britain Relating to Boundary Waters Between the United States and Canada, Jan. 11, 1909, U.S.-Gr. Brit., 36 Stat. 2448 (providing that their shared waters "shall not be polluted on either side to the injury of health or property on the other").

4. Less than three dozen international environmental agreements existed in 1972. *Environmental Law: Contemporary Issues*, *supra* note 2, at 675.

5. *Id.* at 678.

6. *Id.* The rate of creation of environmental laws actually increased significantly in the 1960s, but not nearly at the rates still seen today. *Id.* at 677.

7. Montreal Protocol on Substances that Deplete the Ozone Layer, Sept. 16, 1987, 26 I.L.M. 1550 (entered into force Jan. 1, 1989).

protection.<sup>8</sup> Ancillary to this modern era was an emergence of international environmental law courses in the curricula of American law schools and a shift of scholarly attention from a basic need for international environmental agreements to the need for more efficient construction and implementation of environmental treaties.<sup>9</sup> Concerns for the condition of the international environment are now thoroughly ingrained in the laws and politics of the world's nations.

It was with this backdrop that Dr. Alexandre Timoshenko drafted the *Environmental Negotiator Handbook*.<sup>10</sup> Dr. Timoshenko's impressive career in international environmental law spans over thirty years and includes service as the Director of the Environmental Law Department at the USSR Academy of Sciences and as the Chief of the Environmental Law Branch at the United Nations Environment Program.<sup>11</sup> He declares that the purpose of his book is to "fill in the gaps in the preparedness of the actors who negotiate environmental agreements."<sup>12</sup> Of particular concern to the author is the preparedness of the convention's secretariat officials, non-government groups, and delegates from weaker countries that may lack the resources that enable them to be adequately prepared for the rigors of negotiations.<sup>13</sup> He leaves these parties largely to their own wits, however, in that his book principally focuses on the mechanics of the negotiation process, not the art of it.<sup>14</sup>

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8. *E.g.*, Convention on International Trade in Endangered Species of Wild Fauna and Flora, March 3, 1973, 12 I.L.M. 1085 (entered into force July 1, 1975); Convention on the Conservation of Migratory Species of Wild Animals, June 23, 1979, 19 I.L.M. 15 (entered into force Nov. 1, 1983).

9. See David M. Driesen, *Thirty Years of International Environmental Law: A Retrospective and Plea for Reinvigoration*, 30 SYRACUSE J. INT'L L. & COM. 353 (2003); Geoffrey Palmer, *New Ways to Make International Environmental Law*, 86 AM. J. INT'L L. 259, 262-263 (1992). Dr. Timoshenko also notes the increasing emphasis on effective implementation in the introduction of the handbook. ALEXANDRE TIMOSHENKO, ENVIRONMENTAL NEGOTIATOR HANDBOOK 21 (Kluwer Law International 2003) [hereinafter ENVIRONMENTAL HANDBOOK].

10. The book's North American distributor is Aspen Publishers and is available at [www.aspenpublishers.com](http://www.aspenpublishers.com).

11. ENVIRONMENTAL HANDBOOK, *supra* note 9, at app.

12. *Id.* at xiv.

13. *Id.*

14. For example, the handbook fails to address ways of quelling the economic concerns inherent in negotiating environmental agreements. See DAVID PEARCE, ET AL., HANDBOOK OF BIODIVERSITY VALUATION: A GUIDE FOR POLICY MAKERS 81-88 (OECD 2002). There are a few instances where Dr. Timoshenko provides some insight into the techniques of treaty negotiation. ENVIRONMENTAL HANDBOOK, *supra* note 9, at 27 (addressing small nation delegates as to how they may overcome the fact that they will be outnumbered by other countries' multitudes of delegates); *Id.* at 37 (noting that "[m]aking a group position widely known through a political organization served as a powerful negotiating tool" in a number of conventions).

The book is separated into two parts: a hardback 274 page text and a CD-ROM containing a 251 page documentary supplement in PDF format. After a remarkably comprehensive introductory section that previews the text and summarizes some of the current issues in international environmental law, the main text is divided into six chapters, each covering a chronological stage of the treaty formation process:

Pre-negotiation (Chapter 1)

Negotiation (Chapter 2)

Adoption and Signature (Chapter 3)

Interim Implementation (Chapter 4)

Entry into Force (Chapter 5)

Implementation and Further Development (Chapter 6)

Dr. Timoshenko effectively uses headings and subheadings to further divide these chapters into individual topics. He illuminates the various facets of each topic with a myriad of official documents from previous environmental agreements and the occasional summary of such documents. These documents are referenced in the text and are located at the end of each chapter.<sup>15</sup> An examination of the variety of included agreements, resolutions, and decisions evidences Dr. Timoshenko's meticulous research efforts that must have included combing through a multitude of sources and carefully selecting only those documents which would be the most helpful to the reader.<sup>16</sup>

In addition to the main text of the book, there is a documentary supplement provided in PDF format on an enclosed compact disc.

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15. The following is an example of how the documents are referenced in the text: "The procedural rules are also very strict about the deadlines for the submission of the sessional documents, which should be circulated to delegations at least six weeks in advance of any meeting of the negotiating committee (*Document 5.2*)."  
ENVIRONMENTAL HANDBOOK, *supra* note 9, at 49. A reader may then turn to the end of the chapter and read an excerpt from "*The Rules of Procedure of the Ad Hoc Working Group of Legal and Technical Experts on Biological Diversity*." *Id.* at 96.

16. For example, the handbook demonstrates the types of commentary common to the pre-negotiation stage of the process by including the wide variety of opinions given on the status of water and health in Europe from delegates to the European Protocol on Water and Health. *Id.* at 39-42.

The author states that the purpose of the supplement is “to equip the negotiators with various, available at hand, documentary sources and actual legal texts to help identify [the] norms of general international law and international environmental law that may substantiate the new legal rules proposed in the course of environmental negotiations.”<sup>17</sup> The extensive 251-page supplement largely achieves this goal. With this CD-ROM, a delegate has a virtual library at his or her fingertips. The usefulness of the supplement is greatly aided by a ten-page introduction that explains the importance of each of the included materials.<sup>18</sup> The text is divided into five parts:

General International Law (section 1)

International Environmental Law (section 2)

United Nations Environment Programme (section 3)

Judicial Decision and Advisory Opinions (section 4)

Table of Web Links (annex)<sup>19</sup>

The General International Law section provides nine different documents, including materials such as the UN Charter<sup>20</sup> and the Vienna Convention on the Law of Treaties.<sup>21</sup> The International Environmental Law section provides fourteen different documents, including materials such as the Hague Declaration on the Environment<sup>22</sup> and the Johannesburg Declaration on Sustainable Development.<sup>23</sup> The United Nations Environment Programme section provides three documents: the United Nations General Assembly Resolution 2997 (XXVII) “Institutional and Financial Arrangements for International Environmental Co-operation,”<sup>24</sup> the Rules of Procedure of the Governing Council of the United Nations

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17. *Id.* at 265.

18. *Id.* at 265-74.

19. The web links reference 36 “International Organizations” and 13 “Multilateral Environmental Agreements” *Id.* at 537-38.

20. U.N. CHARTER.

21. Vienna Convention on the Law of Treaties, May 23, 1969, 1155 U.N.T.S. 331.

22. Declaration of the Hague, March 11, 1989, 28 I.L.M. 1308.

23. Johannesburg Declaration on Sustainable Development, A/ CONF.199/L.6/Rev.2 (2002), available at <http://ods-dds-ny.un.org/doc/UNDOC/LTD/N02/578/83/PDF/N0257883.pdf?OpenElement>.

24. *Institutional and Financial Arrangements for International Environmental Co-operation*, G.A. Res. 2997 (XXVII), U.N. Doc. A/RES/3004 (1972).

Environment Program,<sup>25</sup> and the Program for the Development and Periodic review of Environmental Law for the First Decade of the Twenty-First Century.<sup>26</sup> The Judicial Decision and Advisory Opinions section includes such important precedent as the *Trail Smelter Arbitration*<sup>27</sup> and the *Corfu Channel Case*.<sup>28</sup>

The documents and supplement combine to form an extensive treatment of the mechanics of the treaty formation process and an encyclopedic resource of international materials for the reader. Delegates negotiating multilateral environmental agreements, as well as practitioners and scholars wishing to better familiarize themselves with the technicalities of negotiating and implementing these treaties, will find this handbook enlightening. The discussion spans the entire process, from pre-negotiation to post-implementation developments. Each topic includes the norms as well as the exceptions to the process.<sup>29</sup> In addition to his own treatment, Dr. Timoshenko includes numerous references to other sources for the reader desiring more information about a specific issue.<sup>30</sup> Thus, one can utilize this book with confidence that it addresses nearly every possible turn that the negotiating process may take.

This comprehensiveness is quite a feat given the brevity of the handbook's description of the process. When one excludes the referenced documents and documentary supplement from consideration, the handbook is only 83 pages long.<sup>31</sup> Thus Dr. Timoshenko's discussion of the treaty negotiation process comprises less than one-fifth of the handbook's total number of pages. This observation is not made to criticize the relative volume of the included documents; however, because they greatly enhance the description of the different aspects of the process. Still, such a large

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25. *Governing Council, Rules of Procedure*, U.N. Environment Program, U.N. Doc. UNEP/GC/13 (1973).

26. Program for the Development and Periodic review of Environmental Law for the First Decade of the Twenty-First Century, U.N. Environment Program, U.N. Doc. UNEP/Env.Law/4/4 (2000).

27. Arbitral Tribunal, 1941. 3 R.I.A.A 1905, 1907 (1949) (holding that state responsibility attaches when interstate damages result from intrastate activity).

28. *Corfu Channel (U.K. v. Alb.)*, 1949 I.C.J. 4, at 22 (April 9) (holding that "the laying of [a] minefield" in Albanian waters "could not have been accomplished without the knowledge of the Albanian Government," and thus Albania was obligated to warn the British vessels of the danger).

29. For example, Dr. Timoshenko provides the different possible times and locations of the adoption of treaties, noting the norms and exceptions. ENVIRONMENTAL HANDBOOK, *supra* note 9, at 141-42.

30. *See id.* at 143 (referencing the UN Office of Legal Affairs website for more information on accreditation); *Id.* at 15 (referencing a UNEP article on "sustainable development").

31. The referenced documents and the supplementary material comprise 458 pages of the 541 page handbook.

disparity shines a spotlight on the shortcomings of Dr. Timoshenko's overly succinct writing style.

Delegates who attempt to read the book cover-to-cover on a plane ride to the host country of an environmental conference may have a tough task ahead of them. The different sections of the handbook often come across like a series of terse abstracts. The author fails to draw from his thirty years of experience to share any measured editorial comments or anecdotes. Perhaps he believes that a handbook is not the proper forum for any personal observations or that the conciseness of the book would suffer. Some readers may be of the same opinion and might find such inclusions annoying or a waste of space, but surely the benefit of learning from the personal experiences of one so versed in the process would offset any detriments caused by such inclusions. After all, the purpose of the book is to "fill in the gaps in the preparedness of the actors who negotiate environmental agreements."<sup>32</sup>

These shortcomings would largely evaporate if the entire book simply and fully incorporated the conversational tone and theoretical discussions included in its "Introductory Article."<sup>33</sup> In addition to previewing the subject matter of the main chapters, the Introductory Article briefly, but adequately, describes such crucial underpinnings to international environmental law as the "precautionary principle"<sup>34</sup> and "sustainable development."<sup>35</sup> The author expresses concerns about treaty "congestion" due to the modern explosion of environmental agreements<sup>36</sup> and the need to harmonize environmental treaties with the WTO and GATT agreements.<sup>37</sup> If only the main chapters had included similar discussions within the context of each stage of the negotiation process, the handbook would have benefited greatly. For example, Chapter Two contains a discussion of the "scientific background" of environmental agreements and its place in negotiations.<sup>38</sup> No mention is made at this point, however, of how the precautionary principle affects the interpretation of scientific data.<sup>39</sup> Such an inclusion could be perceived as redundant given the principle's

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32. ENVIRONMENTAL HANDBOOK, *supra* at xiv.

33. *Id.* at 1-31.

34. *Id.* at 15-16.

35. *Id.* at 19.

36. *Id.* at 21.

37. *Id.* at 25-26.

38. *Id.* at 45-139.

39. Some scholars are quite hostile towards the precautionary principle's current role in evaluating scientific data. *See, e.g.*, Cass R. Sunstein, *Beyond the Precautionary Principle*, 151 U. PA. L. REV. 1003, 1027-28, 1044-54 (2003) (arguing that the precautionary principle often fails to make economic sense).

treatment in the introduction,<sup>40</sup> but its omission demonstrates my major complaint about this handbook: Dr. Timoshenko too often holds back on sharing his personal expertise beyond explaining the technicalities of the negotiating process. The text and referenced documents do provide an excellent tool for one preparing for and participating in multilateral negotiations because they meticulously portray the process with all of its twists and turns. They fail, however, to portray the thoughts and impressions of Dr. Timoshenko, which would be invaluable to most readers of the handbook.

In addition to my critique of the main text, I have concerns about the documentary supplement. Each of the first three sections on the CD-ROM contains a substantial array of pertinent resources for environmental negotiators. However, the fourth section, Judicial Decision and Advisory Opinions, I found incomplete. Dr. Timoshenko limits the subject matter of this last section to four cases pertaining to a state's duty not to harm another state due to activities within its own boundaries.<sup>41</sup> These cases serve as important precedent for international environmental law because of the transboundary nature of environmental issues. I was surprised, however, to discover the absence of more general international cases concerning the legal effect of verbal agreements or unilateral statements. I was particularly surprised by the omission of the two cases; *Legal Status of Eastern Greenland*<sup>42</sup> and the *Nuclear Tests*.<sup>43</sup> The *Legal Status of Eastern Greenland* provided that an exchange of statements by the foreign ministries of Denmark and Norway amounted to a binding verbal agreement.<sup>44</sup> The court in the *Nuclear Tests* went further in holding that a unilateral statement given with the intent to be bound by a high ranking French official created a legal obligation.<sup>45</sup> While it is important to note that these cases did not arise out of the negotiating process outlined in Dr. Timoshenko's handbook, these

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40. ENVIRONMENTAL HANDBOOK, *supra* note 9, at 15-16.

41. *See supra* notes 27-28.

42. *Legal Status of Eastern Greenland* (Den. v. Nor.), 1933 P.C.I.J. (ser. A/B) No. 53, at 71 [hereinafter *Greenland Case*].

43. *Nuclear Tests* (Austl. v. Fr.), 1974 I.C.J. 253 (Dec. 20); *Nuclear Tests* (N.Z. v. Fr.), 1974 I.C.J. 457 (Dec. 20).

44. *Greenland Case*, *supra* note 42. The court found the statement by the Minister of Foreign Affairs that "I told the Danish Minister today that the Norwegian Government would not make any difficulty in the settlement of this question" to signify an affirmative "obligation to refrain from contesting Danish sovereignty." *Id.*

45. *Nuclear Tests* (Austl. v. Fr.), 1974 I.C.J. 253, at 267-72 (Dec. 20). The court found that a series of public statements by the French Minister of Foreign Defense concerning France's intention to cease nuclear atmospheric testing created a legal obligation to stop such testing. *Id.*

cases still serve as an important precedent for one participating in such negotiations. State representatives must be careful not to disserve their nation's interests by forming verbal agreements with another government or by making promises in front of television cameras. While being mindful of their own tongues, delegates will also want to monitor other nations' government officials for such agreements and promises.<sup>46</sup> Thus, although these cases do not fall within the neat process detailed in the handbook, state representatives should be aware of their holdings. Hopefully, later editions of the handbook will expand the scope of included judicial precedent and incorporate them in the supplement. With these cases added, an already useful collection of regulations, conventions, and judicial precedent will serve as a more complete resource for negotiators.

My discussion now turns to the handbook's format, because in the realm of handbooks, format is nearly as important as content. An effective handbook must be configured in a way that allows the reader to quickly reference pertinent information. The format of the *Environmental Negotiator Handbook* generally serves this purpose. Of particular benefit is Dr. Timoshenko's use of headings and subheadings to divide chapters into bite-sized sections. These sections guide the reader logically along the chronological path to treaty implementation. Equally important is Dr. Timoshenko's astute placement of the referenced documents at the end of each chapter. This sensible location allows the reader to thumb to the end of a chapter for those documents of interest without having his/her reading stifled by lengthy documents within the text.<sup>47</sup>

The size of the book, aided by Dr. Timoshenko's decision to provide the documentary supplement on an included CD-ROM, also facilitates the handbook's usability. At 274 pages of written text, the book is small enough to fit neatly in a briefcase or travel bag. The book provides a pocket on the inside of its back cover for the documentary supplement disk. Of course, a negative of including the supplement in software form is that one must have a computer with a CD-ROM drive to utilize it. This inconvenience, however, fails to outweigh the benefit of keeping the book from reaching an unruly size or weight. I know I would rather carry a 274-page book in my briefcase than a 541-page tome.

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46. A number of scholars have noted the possibility of citing these cases to prove the existence of binding international agreements. *E.g.*, Ruth Okediji, *Toward an International Fair Use Doctrine*, 39 COLUM. J. TRANSNAT'L L. 75, 118 n.175 (2000); John Quigley, *The Israeli-PLO Interim Agreements: Are They Treaties?* 30 CORNELL INT'L L.J. 717, 722 (1997).

47. See *supra* note 15 for an example of how documents are referenced within the text.

I do have a couple of suggestions which I believe would significantly improve later editions of the book. My major submission is to greatly expand the handbook's index, as I found it largely incomplete. Important terms such as "depository" and "secretariat" are absent from the index, despite their in-depth treatment in the text. One may be able to determine the location of the terms by utilizing the book's table of contents, but the absence of a thorough index impairs the handbook's function as a quick reference guide. Also, the table of contents does not always list every location of the term's discussion. For example, the term "secretariat" is discussed in depth in the introduction (where it is also first defined) as well as in numerous sections in which it does not appear in the section title.<sup>48</sup> Thus, the table of contents does not help one find these discussions of the term. Meanwhile, other important terms, such as "interpretative declaration," are not found in the table of contents or the index. A delegate wishing to issue an interpretative declaration about a treaty would have no choice but to search the text to find the location of its discussion.<sup>49</sup> I would much rather the book had a thorough and redundant index, such as the one found in the *Bluebook*, as compared to the *Environmental Negotiator Handbook's* emaciated version.<sup>50</sup>

In addition to a more thorough index, the book would benefit significantly from a glossary.<sup>51</sup> Dr. Timoshenko defines possibly confusing terms within the body of the book, but a brief glossary would end the frustration of searching the text for the definition. Minus these two suggestions, I found nothing objectionable about the format of the handbook.

In sum, Dr. Timoshenko drafted a skeletal, yet comprehensive, handbook on negotiating international environmental agreements. Delegates to multinational conventions would likely find it to be an adequate means for preparing themselves for their negotiations. They can use the handbook to confidently anticipate the entire course of the negotiating process and will have a wealth of international law sources on the enclosed documentary supplement.

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48. ENVIRONMENTAL HANDBOOK, *supra* note 9, at 9, 52, 67-68, 142.

49. The handbook discusses making interpretive declarations in chapter three's "Final Act" section. *Id.* at 145-47.

50. I chose *The Bluebook* as an illustrative example because it is one most readers are familiar with. There are multiple ways to get to the same location through the *Bluebook's* index, which is 36 pages longer than the *Environmental Negotiator Handbook*. Compare THE BLUEBOOK: A UNIFORM SYSTEM OF CITATION (Columbia Law Review Ass'n et al. eds., 17th ed. 2000), with ENVIRONMENTAL HANDBOOK, *supra* note 9, at 539-41.

51. The United Nations has a "Treaty Handbook" available online which provides a helpful glossary. United Nations — Office of Legal Affairs, Glossary, available at <http://untreaty.un.org/English/TreatyHandbook/hbframeset.htm>.

Likewise, scholars and practitioners wishing to familiarize themselves with the methods of negotiating international environmental agreements will find it equally informative. I believe, however, that the handbook could be markedly better with a few minor changes. The most notable of which would be dropping the overly objective and succinct writing style for something a bit more engaging and adding a more thorough index.