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Citation Information

Mikadze, Kirsten. "Book Notes: Corporate Accountability in International Environmental Law, by Elisa Morgera." *Osgoode Hall Law Journal* 49.3 (2012) : 609-611.

<http://digitalcommons.osgoode.yorku.ca/ohlj/vol49/iss3/11>

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Book Note**CORPORATE ACCOUNTABILITY IN INTERNATIONAL ENVIRONMENTAL LAW, by Elisa Morgera¹**

KIRSTEN MIKADZE

THE NATURE OF ENVIRONMENTAL REGULATION in international law is changing. Traditional, state-authored tools of norm creation and enforcement are increasingly supplemented, replaced, and complemented by instruments of non-state origin. This evolution becomes particularly significant when viewed alongside the growing influence of multinational corporations (MNCs). Not only has the importance of MNCs in the regulation of the environment come to rival (and even overshadow) that of the state, but also the activities of MNCs can significantly and negatively impact upon the environment. In international environmental law as conventionally conceived, norms that would place some measure of accountability upon these actors have not evolved in step with this changing reality.

In her thoughtful and comprehensive work, Elisa Morgera seeks to define and locate the concept of corporate accountability in international environmental law. More specifically, she identifies an emerging body of accepted standards for corporate accountability that is currently being implemented by non-state actors. She highlights how these standards—which are rooted in international environmental law but increasingly authored by non-state actors—have the potential to temper and render publicly accountable corporate conduct where state-led initiatives to this end are lacking or absent.

Morgera begins by identifying a clear need for corporate accountability in international environmental law. She underscores how the traditional legal approaches to regulating private activity and assigning liability for environmental damage in national and international law are inadequate.

1. (Oxford: Oxford University Press, 2009) 275 pages.

She then maps out the differing non-state approaches to developing a set of international standards for corporate accountability. She discerns the ways in which overlap between these approaches reveals accepted international standards for corporate accountability in international environmental law. In her analysis, she draws from instruments authored by international organizations (IOs) such as the United Nations (UN), the Organisation for Economic Co-operation and Development, and, most significantly, the International Finance Corporation (IFC). She also examines the contribution of case law originating from a broad range of human rights monitoring bodies, including national courts, the European Court of Human Rights, and the UN Economic, Social and Cultural Rights Committee.

Her thorough analysis discloses a convergence with respect to certain standards of accountability for corporate actors: environmental integration (through environmental management systems and environmental impact assessment); public involvement; precaution; public consultations; prevention (particularly where transboundary harm or implications for human rights are likely involved); disclosure of environmental information; and contribution to sustainable development (through the sustainable use of natural resources). Morgera is able to demonstrate how, by obtaining a requisite degree of acceptance and detail, these standards have transformed existing inter-state obligations and norms located in international environmental law into normative benchmarks that are directly applicable to MNCs and other private actors. Morgera notes, significantly, that these standards are the fruits of cooperative initiatives undertaken by a variety of stakeholders, often with little or no state involvement.

Morgera enriches this analysis by highlighting the ways in which these standards have been put into practice. She examines the existing and potential tools for compliance employed by IOs to ensure adherence to these standards by private actors. A variety of mechanisms are available to international financial institutions (particularly the IFC) and IOs, as well as through UN-business partnerships, to compel corporate compliance with international standards for corporate environmental accountability. In each instance, she demonstrates how these institutions have the potential (as yet not fully realized) not only to ensure compliance through consistent application of these standards and ongoing monitoring of their implementation, but also to provide further impetus for their elaboration and diffusion. Recognizing this unrealized potential, she provides several suggestions for improving their effectiveness.

In analyzing non-state efforts to ensure that MNCs are environmentally accountable in their profit-seeking activities, Morgera hints at a larger evolution occurring in international environmental law. As awareness of the environmental impact of the activities of MNCs grows and traditional state-led efforts prove ineffective in responding, non-state actors are finding ways to collaborate in filling this void.

