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Hassan Ahmad

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Book Note

THE INTERNATIONAL LAW OF ENVIRONMENTAL IMPACT ASSESSMENT, by Neil Craik¹

HASSAN AHMAD

ECONOMIC ACTIVITIES IN ONE COUNTRY often have environmental impacts outside that country. Environmental Impact Assessments (EIAs) are a set of institutionalized decision-making arrangements utilized by domestic decision makers concerning environmental issues that have international effects. In *The International Law of Environmental Impact Assessment*, Neil Craik's central objective is to assess whether EIAs, as a process for the implementation of international environmental objectives, are sound policy. In doing so, Craik analyzes "how EIAs may structure scientific, political, and normative considerations in such a way as to influence substantive outcomes."²

Part I presents background norms from both domestic and international settings, in particular pre-existing general principles of international environmental law, that have influenced EIA development. The author outlines two complementary roles played by EIA processes in international environmental governance, namely: 1) an interest-coordination function between affected states, and 2) an interest-transformation function in which norms are internalized by domestic decision-making agencies after repeated state-to-state interactions.

Part II gives an overview of the domestic origins of international EIA commitments and the legal principles by which those commitments are framed on the international stage. The author firstly presents the components of domestic EIA systems, which are: "(1) screening; (2) scoping; (3) impact analysis and report preparation; (4) public and agency participation; (5) final decision; and (6) follow up."³ He then addresses the continuing debate of whether EIAs should be procedural or substantive in nature and concludes that, despite their open-

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1. (Cambridge, UK: Cambridge University Press, 2010) 332 pages.
 2. *Ibid* at 5.
 3. *Ibid* at 27.

ended nature, EIAs are a combination of procedural rules and environmental values requiring decision-makers to account for and justify their decisions. In other words, the author adopts the perspective of EIAs as processes substituting for substance or, stated otherwise, "the substantiation of procedure."⁴ The author continues by looking at the application of EIA processes beyond the domestic context. He applauds their reception at the international level, arguing that EIAs have progressed to become a highly elaborate scientific, legal, and political tool, which influences political decisions to make them more systematic and transparent in order to account for the environmental impacts of proposed domestic activities. The second half of Part II looks at various legal principles including the principle of non-discrimination, the harm principle, the duty to cooperate, and sustainable development. While each has advantages and disadvantages, the author argues that they all should be taken into consideration rather than operating in a mutually exclusive fashion.

Part III presents the sources and structure of EIA commitments in international law. The author surveys international treaties, jurisprudence, international organization documents and practices, and customary international law. He asserts that these various instruments together have normative effects thereby influencing the processes and decisions of individual states irrespective of their binding nature. With respect to the structure of EIA commitments, the author states that "the existence and characteristics of a domestic EIA system, the nature of the norms within specific regimes and the nature of the impact itself may each influence the kinds of EIA commitments that states are willing to accept."⁵

Part IV looks at the role of EIA commitments in international law specifically outlining various compliance theories and interest-based models. Craik contrasts the compliance models of Abram and Antonia Chayes (The Managerial Model), Harold Koh (Transnational Legal Process), and Thomas Franck (Legitimacy and Compliance) and analyzes how international EIA commitments fare in light of these models. Craik asserts that the concept of EIAs as contributors to state compliance with international environmental norms suggests that EIAs will facilitate the coordination of state interests in the short-term while in the long-term they will transform state interests by internalizing international environmental norms. This internalization process will be driven by the need for scientific and political legitimacy.

Part V concludes with a review of the principles of proceduralism, transnationalism, and integration in international environmental governance and their roles in making EIA commitments into effective procedural mechanisms exerting influence on domestic decision-making processes.

4. *Ibid* at 37.

5. *Ibid* at 162.