

BOOK REVIEWS

The Paris Agreement on Climate Change: Analysis and Commentary, edited by Daniel Klein, María Pía Carazo, Meinhard Doelle, Jane Bulmer and Andrew Higham
Oxford University Press, 2017, 480 pp, £80 hb, £34.99 pb
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Though one of the youngest multilateral environmental agreements, the 2015 Paris Agreement¹ on climate change has already led to a burgeoning body of scholarship in the few years since its adoption.² What then, one may ask, can there be gained from an(other) edited volume dedicated to the treaty? As it turns out, still quite a bit.

The Paris Agreement on Climate Change: Analysis and Commentary was put together by a team of editors, several of whom worked at the United Nations Framework Convention on Climate Change (UNFCCC)³ Secretariat at the time the Paris Agreement was being negotiated. Their ‘insider’ perspective infuses the book with detail and colour, and it also shines through in the selection of chapter authors, many of whom were actively involved in the negotiations – as part of country delegations, working with the Secretariat, or at think tanks closely following the talks. This practitioners’ perspective is the main added value of the book, though (as explained below) the approach also has some drawbacks.

The book is divided into three main parts. Part I sets the stage, by providing an introduction to climate science, politics, and the multilateral climate change agreements that

¹ Paris (France), 12 Dec. 2015, in force 4 Nov. 2016, available at: http://unfccc.int/paris_agreement/items/9485.php.

² To give a small sample from just the *legal* literature: L. Rajamani, ‘Ambition and Differentiation in the 2015 Paris Agreement: Interpretative Possibilities and Underlying Politics’ (2016) 65(2) *International & Comparative Law Quarterly*, pp. 493–514; L. Rajamani, ‘The 2015 Paris Agreement: Interplay Between Hard, Soft and Non-Obligations’ (2016) 28(2) *Journal of Environmental Law*, pp. 337–58; C. Streck, P. Keenlyside & M. von Unger, ‘The Paris Agreement: A New Beginning’ (2016) 13(1) *Journal for European Environmental & Planning Law*, pp. 3–29; A. Rowell & J. van Zeben, ‘A New Status Quo: The Psychological Impact of the Paris Agreement on Climate Change’ (2016) 7(1) *European Journal of Risk Regulation*, pp. 49–53; D. Bodansky, ‘The Paris Climate Change Agreement: A New Hope’ (2016) 110(2) *American Journal of International Law*, pp. 288–319; J.E. Viñuales, ‘The Paris Agreement on Climate Change’ (2016) 59 *German Yearbook of International Law*, pp. 11–45; C. Voigt & F. Ferreira, ‘“Dynamic Differentiation”: The Principles of CBDR-RC, Progression and Highest Possible Ambition in the Paris Agreement’ (2016) 5(2) *Transnational Environmental Law*, pp. 285–303. In addition, various special issues or sections of journals have been dedicated to the Paris Agreement and its implementation, including: (2016) 25(2) *Review of European, Comparative & International Environmental Law*; (2016) 6(1–2) *Climate Law*; (2016) 7(1) *European Journal of Risk Regulation*; (2016) 26 *Questions of International Law*; (2016) 10(1) *Carbon & Climate Law Review*; (2018) 12(3) *Carbon & Climate Law Review*; Symposium on ‘Rights-Based Approaches to Climate Change’ (2018) 7(1) *Transnational Environmental Law*, pp. 9–87. Lastly, the Paris Agreement is the subject of dedicated parts in textbooks on international climate change law (e.g., D. Bodansky, J. Brunnée & L. Rajamani, *International Climate Change Law* (Oxford University Press, 2017), pp. 209–57) and international environmental law (e.g., P. Sands & J. Peel, *Principles of International Environmental Law*, 4th edn (Cambridge University Press, 2018), pp. 318–31).

³ New York, NY (US), 9 May 1992, in force 21 Mar. 1994, available at: <https://unfccc.int/resource/docs/convkp/conveng.pdf>.

preceded the Paris Agreement. Part II describes in detail the various aspects of the Paris Agreement. Finally, Part III explores the Paris Agreement through a broader lens, assessing its overall importance in the context of the existing climate change legal regime and other related international law.

Part I provides the background for the more detailed analysis of the Agreement that follows in Part II. This part begins with a broad and serviceable overview of the scientific and political background to the Agreement. It then moves on to sketch the legal context for the adoption of the Agreement. As Chapter 2 notes, '[a] thoughtful assessment of the Paris Agreement and the prospects for its implementation and future strengthening ... requires an understanding of the pre-existing regime' (p. 28). Indeed, as an agreement nested in and closely tied to the UNFCCC, this part could have benefited from a more in-depth treatment of the legal framework provided by the UNFCCC, including its overall architecture, principles and obligations, as well as the mechanisms and institutions put into place over the last decades. While the chapters in Part II help to fill this gap, there are some aspects that could have been introduced in more detail. For instance, a longer discussion of the market-based mechanisms established by the Kyoto Protocol⁴ would have helped to contextualize the cooperative approaches created by Article 6 of the Paris Agreement, analyzed in Chapter 11.

The remainder of Part I offers an overview of the negotiation history of the Agreement, an explanation of its key concepts, including novel notions such as 'ambition' and 'progression', and a discussion of the legal form of the Agreement, as well as the legal nature of the various obligations. These chapters adopt a helpful bird's eye view of the Agreement, allowing the reader to understand the trade-offs that had to be made by the negotiators to craft consensus in Paris.

The second and largest part of the book is dedicated to the provisions of the Agreement. Each chapter in this part is, by and large, structured in a similar fashion, starting with a general overview and discussion of the context and negotiation history, followed by a more in-depth substantive analysis, an indication of the prospects for implementation, and lastly an evaluation and outlook. Although the similar chapter structure helps the reader in navigating the book, it also seems to have presented somewhat of a straitjacket for some chapter authors. For instance, there is not much to say in terms of 'implementation' when it comes to the institutional arrangements and final clauses of the Agreement (Chapter 21).

Nevertheless, most chapters contain well-structured, informative, and detailed analyses of all the provisions of the Paris Agreement. The main value of this part lies in its comprehensive coverage. Provisions that may receive only limited or no scrutiny in other books and articles – such as the Preamble and definitions, the final clauses, or provisions on capacity building and education, training, public awareness, participation and access to information – in this volume are the subject of dedicated chapters. This leaves readers with a fuller understanding of the Agreement, as well as the interlinkages between its individual elements.

⁴ Kyoto (Japan), 11 Dec. 1997, in force 16 Feb. 2005, available at: <http://unfccc.int/resource/docs/convkp/kpeng.pdf>.

It is in this part, however, where the diversity of backgrounds also leads to some drawbacks. Although the chapter authors are generally experts in the field covered by their chapter, not all are lawyers. While the non-lawyers display an impressive amount of legal expertise – an indication perhaps of how blurred disciplinary boundaries have become in the practice of international climate policy – the consequence is that the book glosses over some pertinent legal questions. For instance, there is virtually no discussion – in either Chapter 5 or 9 – of the legal character and implications of the Paris Agreement’s nationally determined contributions themselves. This means that the primary vessel that connects the international legal framework for climate action with national implementation remains under-examined.⁵ For a book that purports to improve understanding of the Paris Agreement and its implementation, this is a significant omission.

In the third and final part of the book, the editors zoom out, taking stock of the strengths and weaknesses of the Paris Agreement, discussing its place in the broader body of international law, and offering views on the prospects of its success. The evaluation of the Agreement by Meinhard Doelle in Chapter 22 strikes a note of cautious optimism, finding that the Paris outcome ‘marks a significant breakthrough in the evolution of the [United Nations] climate regime’ but that it also ‘represents a high stakes experiment in multilateral cooperation’ (p. 385). Although the limitations of the Paris Agreement are not overlooked, the overall message of the book is that the Agreement constitutes progress, especially compared with its predecessor, the Kyoto Protocol.

In the concluding chapter, Andrew Higham makes the important point that ‘[t]he Paris Agreement alone will not be able to achieve [the scale and the pace of the transformation required]’ (p. 413). Indeed, the book would have been incomplete without due attention to the role of other international legal regimes, as well as non-state actors (Chapters 23 and 2.B, respectively). The chapter on other international legal regimes does raise some questions, however. For instance, when María Pía Carazo and Daniel Klein in Chapter 23 suggest that the Paris Agreement’s ‘innovative design elements may very well influence or be imported by other regimes that need to reconcile respect for sovereignty and national autonomy with collective goals’ (p. 391), they fail to specify which regimes they have in mind, or why this would be a good idea in the first place.

Lastly, though the criticism of a book being outdated is perhaps all too commonly raised in an area prone to ongoing policy development, this is a book clearly in need of a second edition. Although I write this admittedly with the benefit of hindsight, several of the book’s chapters require a substantive update following agreement on the so-called Paris Rulebook at the UN climate conference in Katowice (Poland), in December 2018.⁶ Specifically, the chapters on mitigation (Chapter 9), transparency (Chapter 18), the global stocktake (Chapter 19), and the implementation and compliance mechanism (Chapter 20) raise various questions about – or outline options for – the more detailed implementation of the Paris Agreement, which by now have been

⁵ For an example of such an analysis, see B. Mayer, ‘International Law Obligations Arising in relation to Nationally Determined Contributions’ (2018) 7(2) *Transnational Environmental Law*, pp. 251–75.

⁶ The set of decisions adopted here is available at: https://unfccc.int/decisions_katowice.

answered through the Rulebook. Moreover, developments following the adoption of the Agreement have also raised new and important issues which are not dealt with in the book, not least the implications of the announced withdrawal by the United States.⁷ While the editors' choice of publishing the book in 2017 is understandable considering the unpredictability of progress in the negotiations – as well as undoubtedly publisher pressure – an update in light of these developments would be welcome.

Notwithstanding the small criticisms, *The Paris Agreement on Climate Change* offers an enlightening and comprehensive discussion of every conceivable element of a key milestone in international climate change governance. Although those interested in an introduction to international climate change law are perhaps better served by other recent books,⁸ this volume should find its way onto the bookshelves of any scholar or practitioner working on the Paris Agreement and its implementation in practice.

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The Human Right to a Healthy Environment, edited by John H. Knox and Ramin Pejan
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What is the place of the right to a healthy environment in the global human rights protection system? Is this right a mere aspiration – a desire to forge yet another elusive and vague provision within a national constitution or an international treaty, a soft law norm that will never be implemented or enforced? Or is it something that has the potential to resonate within the walls of national and international courts, bend the will of governments, and set out the path for environmental justice? *The Human Right to a Healthy Environment* offers an excellent selection of authoritative and critical contributions from some of the leading experts in environmental and human rights law, which ‘examine many different facets of the right to a healthy environment’ (p. 6) by addressing its recognition, adoption, interpretation and application. The contributions are thematically organized. Following the Introduction, Chapters 2 and 3 examine constitutional environmental rights; Chapters 4 to 6 address the relevant developments in international, regional, and national litigation; Chapters 7 and 8 analyze the role of the right as a norm of international law; Chapters 9 and 10 search for moral and legal

⁷ See, e.g., L. Rajamani & J. Brunnée, ‘The Legality of Downgrading Nationally Determined Contributions under the Paris Agreement: Lessons from the US Disengagement’ (2017) 29(3) *Journal of Environmental Law*, pp. 537–51.

⁸ Notably Bodansky, Brunnée & Rajamani, n. 2 above; and B. Mayer, *The International Law on Climate Change* (Cambridge University Press, 2018).