Book Reviews

Climate Change and Starvation: From Apocalypse to Integrity, by Laura Westra

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*Matteo Fermeglia**

Laura Westra has firmly advocated for the acknowledgment and pursuit of ecological integrity as a paradigm not only for science but also for law, policy and society for decades. In this vein, *Climate Change and Starvation* fits in with the author's previous monograph, *On Hunger*, published in 2017.[1] In *On Hunger*, Westra reaffirmed the close connection between the global food production chain, the economic interests behind it and the inherent flaws in the regulation intended to protect public health and the environment. *Climate Change and Starvation* can be seen as a manifesto of Westra's pursuit of ecological integrity as the key answer to the predicament of our society and planet in light of the climate crisis. Primarily relying on legal analysis, this book unwinds a broad conceptualisation of the dynamics undermining our planet's resilience as leading to a situation that Westra describes as 'global starvation'. In Westra's view, 'starvation' comes from the deprivation of nourishment concerning a large share of the human population, as perpetrated by multinational agribusiness corporations through the relentless exploitation of natural resources and ecosystems.

Furthermore, the current global 'starvation' unravels due to two major causes. First, 'the retreat of the state in the face of the overwhelming power of corporate persons that control our air, water, soil, and ultimately the food we eat and our climate'.[2] Second, an 'approach to legality [...] not only obsolete, but morally wrong', in light of the mounting evidence supporting a wholly integrated view to the main threats to human rights stemming from the destruction of forests, the contamination of waters, and the over-exploitation of soils.[3] Although framed in the book as political, if not philosophical issues, both the above causes entail relevant legal and governance effects. Thus, Westra unveils the unfitness of our existing legal regimes – in particular, international law – to address such causes in a comprehensive and holistic way.

Westra carries the reader through a vivid and coherent stream of critical views of our current political, social, and economic system while constantly sparking the same reader's interest with provocative ethical and – ultimately – legal questions. After some insightful introductory thoughts in Chapter 1, in Chapter 2, Westra turns her look to the individual's moral responsibility with regard to global 'starvation', based on personal dietary choices. This chapter's key point of discussion relates to the ethical foundations of the increasing turn to more sustainable and informed food choices. Is this a morally spurred turn, in a Kantian 'dignitary' meaning, or rather a strict pursuit of self-improvement and personal fitness, regardless of the environmental and climate change concerns linked to livestock and food production? This intellectual exercise unfolds fascinating perspectives in the lingering debate about the importance of a collective shift from complicity (or complacency) towards full awareness of, and active reaction to the climate crisis.[4] The chapter ends with an extensive reference to the UN Special Rapporteur Oliver de Schutter's 2014 report to the UN General Assembly.[5] The report urged for a radical transformation of the normative content of the right to food and further stressed the close interrelation between agricultural practices and climate change.

Next, Westra appraises the main ecological aspects of our collective path towards global 'starvation'.

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1 Laura Westra, *On Hunger: Science, Ethics and Law* (Brown Walker Press 2017).

2 Laura Westra, *Climate Change and Starvation* (Palgrave Pivot 2020) 3.

3 ibid 5.

4 Robert J. Lifton, *The Climate Swerve: Reflections on Mind, Hope, and Survival* (The New Press 2017).

5 UN Human Rights Council, 'Report of the Special Rapporteur on the right to food, Olivier De Schutter – Final report: The transformative potential of the right to food' UN Doc. GE.14-10537 (24 January 2014).

Chapter 3 is dedicated to the three main elements currently threatened by human exploitation: forests, water, and air. The chapter draws from the notion of ethics coined by Aldo Leopold and eventually embraced as the foundation of a far-reaching ecological conservation movement. Accordingly, Westra suggests that a paradigm shift is needed in both agricultural and forestry practices from the current pattern of over-consumption, mostly carried out by Western corporations (most notably in the Amazon), to a truly ecological one, which fully recognises the impairment of such ecosystems' integrity due to the shortcomings of existing human rights and international law.

Chapter 4 presents an open critique of the role of law as a shield for, rather than a sword against the transnational power exercised by corporations in the rush to exploit natural resources.[6] Such power – also referred to as 'corporate stranglehold' in the book – consists of both the ubiquitous corporate influence over democratic processes, and the leverage of legally protected ownership of land and water. Striking examples are analysed, such as the daunting water quality and public health situation in Flint, Michigan, and the massive land grabs in Africa and South America. With regard to land grabs in particular, the book explains how corporations in the food, agriculture and biofuels business took advantage of the shortcomings in the relevant regulatory regimes in India and in the Amazon, and the lack of ownership protection in Tanzania, ultimately forcing local populations and indigenous groups to abandon their homeland or to expose themselves to physical and mental diseases.

Chapter 5 delves into the dreadful combination of human-induced climate change, the staggering depletion of natural resources at the hands of corporate power, and the inadequacy of the current legal regime to protect those who are bearing the most severe consequences of 'starvation'. Here, Westra firmly denounces the failure of international law to adequately protect environmental refugees and displaced persons, and consequently, the inadequacy of legal positivism, as both downplaying individual rights of refugees as human beings and ultimately failing to adequately recognise the social, economic and cultural conditions that are distinctive of Indigenous groups as part of a nation. In particular, Westra points to the narrow scope of the 1951 Convention Relating to the Status of Refugees, which does not include individuals or groups affected by climate change impacts, and to the incapacity of international organizations such as the United Nations High Commissioner for Refugees (UNHCR) to ensure effective protection of displaced persons within national states' territories. Moreover, with the example of environmental pollution in Canada, Westra shows that despite increasing recognition of concern for the status of Indigenous communities in international conventions, a growing control of corporations over state activities can be noted. This leaves Indigenous communities as 'defenders of last resort, with bows and arrows as their only weapons' against the on-going assault on ecological integrity.

Last, Chapter 6 builds on the previous findings to unfold the final prospective solution to the current state of planetary 'starvation': to finally champion ecological integrity as the conceptual underpinning of international legal regimes. The author proposes here to move beyond mere legal recognition of the role and values of nature and ecosystems, their function and services, thus reversing the traditional anthropogenic approach. Westra ventures through the vast body of literature on ecological integrity developed over the last twenty years to enshrine her concept of integrity as an array of mutually reinforcing values. Accordingly, ecological integrity certainly comprises ecosystems' health and stability (i.e. functional integrity). Yet, and perhaps more importantly, ecological integrity calls for ecosystems to develop without any wilful, active human intervention. Hence, natural systems should be allowed to develop autonomously (i.e. structural integrity).

Therefore, the current approach employed by regulatory regimes, which is – at best – directed to 'save one species or another at a time', thus 'evaluating each asset in isolation to determine whether it merits protection', must be overcome.[7] This calls for a radical reconsideration of international law. International law is repeatedly circumvented and/or leveraged by states and corporate powers to the detri-

6 See also Julian Arato, 'Corporations as Lawmakers' (2015) 56 Harvard International Law Journal 229–295.

7 See Westra (n 2) 127 (in turn quoting the seminal work of Fritjof Capra and Ugo Mattei, *The Ecology of Law: Toward a Legal System in Tune with Nature and Community* (Berrett-Koehler Publishers 2015) 179).

ment of nature, thus contributing to the acceleration of 'starvation'. According to Westra, international law should therefore develop towards a system of global trusteeship, based on legal principles from which neither states nor corporations can derogate. If our nature and climate are indeed a 'common concern of mankind', this concern should entail truly common and shared responsibilities. These ought to be established through a reciprocal fiduciary relation between states and their citizens, as well as among states. And yet, drawing from Philippe Sands' works, the current system fully reflects corporate interests, thus mirroring a 'lawless' system, where disinterest and apathy in true political debates gain ground and further fuel the withdrawal of states as purveyors of public goods and reference of traditional values.[8]

I strongly recommend this book to all academics and practitioners in the field of environmental and climate law. Although not strictly focused on legal analysis, *Climate Change and Starvation* is a valuable source of conceptual insights from ecology and philosophy, contributing to the reconsideration of our legal responses to the climate crisis. More generally, given the underlying disruptive vision that this book embraces, one might find some claims too direct and radical. Yet, I believe this is in line with the critical thinking that Westra aims to spark. From a formal standpoint, each chapter begins with a short summary and ends with a reference section. On the one hand, this provides the reader with an accurate and chapter-by-chapter flow of information as the topics covered in the book range widely. On the other hand, in my view, this slightly undermines the book's readability. I also notice some flaws in the book's structure. While the focus on individual food choices in chapter 2 is commendable, it is not clear how it fits into the overall logical flow of the book, and in particular, how personal choices factor in the proposed ecological integrity approach to the problem of global 'starvation'. Finally, references in chapter 3 appear slightly out-dated as they heavily include works of the 1990s or early 2000s.

These quarrels aside, *Climate Change and Starvation* is a precious source of thoughts as Westra manages to provocatively question the widespread mindset of environmental and climate lawyers. Importantly, it casts clear light on the inherent dynamics behind the net of principles and rules, in which lawyers inevitably find themselves trapped.

Authority and Legitimacy of Environmental Post-Treaty Rules, by Tim Staal

Oxford: Hart Publishing, 2019

328 pp., £75/€82 (hardback)

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Legal research on informal international instruments is still in its infancy in many ways. Still too often, the literature treats legally non-binding instruments as a simple side note of 'soft law', even though international environmental law, to name an example, is to a large extent dependent on non-binding instruments created by treaty bodies such as Conferences of the Parties (COPs) or Meetings of the Parties (MOPs). This is surprising since at this point it is almost a cliché to mention that the notion of soft law is not really helpful, but for an elementary explanation of the non-binding but legally relevant nature of the instruments it delineates. Perhaps we are still somewhat wary of exploring soft law and its quasi-legal characteristics,[1] because initially, it may seem that soft law does not yield itself easily to analysis by traditional legal methodology.

Tim Staal has noted the same shortcoming. In *Authority and Legitimacy of Environmental Post-Treaty Rules*, he undertakes the challenging task of systematising the non-binding instruments created by treaty bodies into something more comprehensible and open for legal analysis. For this reason, he introduces the concept of 'post-treaty instruments', consisting of case-specific post-treaty decisions and post-treaty rules (PTRs), the latter of which is the main focus of analysis in the book, as they create general rules for all state parties to a treaty.[2]

The book is a pleasant read. Staal's writing is lucid, and his analysis in the first ~200 pages advances inexorably from one conclusion to another as he il-

8 See Philippe Sands, *Lawless World: Making and Breaking Global Rules* (Penguin 2006).

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1 The space between law and non-law that has been described as a 'legal purgatory', see Daniel Bodansky, 'The Development of International Environmental Law' in Ed Couzens and Tuula Honkonen (eds), *International Environmental Law-making and Diplomacy Review 2010* (University of Eastern Finland 2011), 11, 26.

2 Tim Staal, *Authority and Legitimacy of Environmental Post-Treaty Rules* (Hart Publishing 2019) 44.

lustrates the volatile nature of PTRs' authority, and how this authority is ultimately rooted in social legitimacy. The book is designed along two lines: first, a description of the differences in the authority of PTRs in different normative or legal orders, and the basis of this authority (Parts I and II, Chapters 1 to 5); and second, a critical examination of the consequences that the volatile nature of this authority may cause, for example, in national court practice, and how to mitigate their negative effects (Part III, Chapters 6 and 7).

Chapter 1 already includes an important suggestion for understanding PTRs, as Staal demystifies their interpretation. Such interpretation should not be seen as an act of discovery, but rather of creation. Thus, PTRs do not merely 'clarify' or 'implement' what already exists in the underlying unclear treaty terms (implicit enabling clauses), or even less in the case of explicit enabling clauses, which often simply delegate actual decisions to be made at a later time. Instead, PTRs' interpretation of the underlying treaty terms consists of regulatory acts. They modify, fill gaps, and create 'authentic interpretations'.[3] This is an important observation, especially for those less familiar with how environmental treaty regimes often operate.

In Chapter 2, Staal takes the somewhat contentious notion of separate normative orders within the international sphere as the basis of his analysis. However, he smartly avoids making any unnecessary generalisations. As he states, in order to be called normative orders, international treaty regimes do not have to be completely separated from other normative orders such as general international law. He also knowingly avoids calling them *legal* orders.[4] Instead, differences in practice, such as how states and courts treat PTRs in different orders, suffices to justify analysing them separately in the search for PTRs' authority.

As Staal then shows, there indeed seem to be clear differences in how PTRs are treated in the internal normative orders as opposed to the practice of international and domestic courts. Most importantly, according to Staal, there is often stronger authority in the former, which is evident as states almost never challenge PTRs within the internal normative orders.[5] There are also some surprising findings that show the confusion of courts in applying PTRs. For example, the recommendatory or mandatory language of a PTR seems to be irrelevant in some cases,[6] and domestic courts do not seem to be consistent in giving more authority to certain types of PTRs, such as for gap-filling over interpretive ones.[7] Staal has gathered an impressive catalogue of cases, and although they do not show a uniform treatment of authority by states or courts in the different normative and legal orders, as a whole, they clearly point in one direction, allowing Staal to conclude, *inter alia*, that '[t]he authority of PTRs in their own normative orders, and the authority they have in the national legal orders, are not just different, but also hardly connected'.[8]

In Chapters 3 to 5, Staal then illustrates that when we seek to assess the authority of PTRs, we should look for the social elements, more precisely social *legitimacy*, to explain not just the degree of authority that PTRs have but also why this authority seems to vary in different normative and legal orders. This is intuitive, and as noted by Staal, it is an aspect often pointed out in existing literature.[9] However, the greatest contribution of this chapter is that it does not take the assertion 'if it is not law, it must be social' at face value, but carefully illustrates how the degree of the authority of PTRs can be only partially explained by the act of delegation in the underlying treaty[10] and by PTRs' interpretative value as laid down in Article 31(3)(a) of the Vienna Convention on the Law of Treaties.[11]

One shortcoming, not so much of the book, but of legal research in general, must be underlined here. When looking at the social authority of rules, it can be contested that merely applying documentary legal methodology is enough. It is restricted to *ex ante* evaluation of the rules' *likely* authority. This constraint is also noted by Staal.[12] Thus, without conducting interviews with state representatives to un-

3 ibid 46–55. Difference between interpretive and modifying PTRs is a question of interpretation itself, but according to Staal, a PTR modifies when it contradicts an underlying treaty term, and interprets when it is reconcilable with them, see at 49.

4 ibid 57 and 60–61.

5 ibid 190.

6 ibid 87–88, 93 and 203.

7 As concluded at ibid 112–113.

8 ibid 113.

9 ibid 184–185.

10 ibid 119–139.

11 ibid 140–183.

12 ibid 190 and 193.

veil different factors contributing to the degree of authority of PTRs such as shared understandings and legitimacy of the adoption procedures,[13] the book is inevitably dependent on somewhat circumstantial evidence and speculation. This causes a clear contrast with the meticulous treatment of the act of delegation and doctrine of interpretation as sources of PTRs' authority in previous chapters. Yet it must be noted that all this is not to say that Staal does not provide valid points to justify considering social legitimacy to be the most likely explanation for PTRs' degree of authority. Further, conducting an interview research that gives reliable information on the degree of authority of PTRs would be a hefty task to add to an already impressive work, although it would have certainly fleshed out the analysis.

The most interesting part of the book is Part III, in which Staal turns from description and analysis to a more critical evaluation of the authority of PTRs. Staal carefully builds a picture which is both convincing and unsettling, as states seem to have a monopoly in determining PTRs' authority as well as in the implementation and application of PTRs. A governmental authority can either apply a PTR in its decisions or not: either way, their behaviour is legal. This is illustrated with the example that Staal also uses to begin and end the book. It concerned a US official that put on hold a shipment of Brazilian mahogany, and its UK counterpart that decided to sit still when faced with a similar shipment. A Brazilian official had warned both of its suspicion that the hardwood was illegally obtained, even though the shipments had received export permits in Brazil. The court in the US decided that the US official was *allowed* to do so based on a PTR. In contrast, a court in the UK decided that the UK official *was not required* to do so due to the unclear authority of the PTR.[14] Courts simply seem to conform with the position that states take in relation to a PTR. This can obviously affect certain administrative law principles such as legal certainty in a negative way.[15]

But some doubts can and should be raised in relation to the solution suggested by Staal. An important part of this solution is the construction of different post-treaty instruments as standard instruments, which could help identify the authority of each PTR type and assist courts in deciding how to treat them.[16] However, there is some confusion regarding the exact legal status of PTRs as standard instruments. At the end of the book, Staal even suggests that certain PTRs should be applied in international and domestic courts 'to the same extent as binding international law'.[17] A bold suggestion for sure, and not surprising considering how Goldmann seems to have abandoned binding law as a useful notion in his work on standard instruments that Staal is referring to.[18] But since states have clearly meant for PTRs to not be binding, doubt can be raised over how successful this attempt can be to make PTRs basically indistinguishable from law in their application. If successful, it may simply threaten to give way for leaks into new ways of exercise of authority by states, which then again are vague in their bindingness. Here, an extension of Klabbers' version of the 'duck test' that Staal applies in relation to PTRs[19] drives the point home: as we apply the same legal qualifications that made law unique and that were stripped from it to be applied to rules in general, we suddenly notice that '[i]t looks like a duck, walks like a duck, and quacks like a duck; it is just that its name has changed'.[20]

All in all, Staal's treatment of the concept of standard instruments in the book is rather thin, mostly discussed in the conclusion. Such an important part of the overall work would have deserved more deliberation, and it certainly would have been interesting for the reader. But as it is, the book still perfectly meets the expectations regarding one of Staal's main objectives, that is, to serve as a basis for further research into the subject, and for the construction of possible standard instruments. It will surely entail further debate on the validity of standard instruments. Finally, similar approaches where soft law is

13 ibid 190–191.

14 ibid 1–2, 115 and 274–275.

15 ibid 213–225.

16 ibid 39–40 and 269–273.

17 ibid 272. This seems to be somewhat contradictory to what he states just shortly before at page 270, that '[t]hen, as now, the aim [is] *not* to turn international administrative-type instruments into formal sources of law'.

18 Matthias Goldmann, 'Inside Relative Normativity: From Sources to Standard Instruments for the Exercise of Public Authority' in Armin Von Bogdandy et al. (eds), *The Exercise of Public Authority by International Institutions: Advancing International Institutional Law* (Springer 2010) 661–711, 711.

19 Staal (n 2) 214.

20 Jan Klabbers, 'The Commodification of International Law' (2008) 1 Select Proceedings of the European Society of International Law 341–358, 347.

broken down to see what is inside should be taken up in relation to all types of soft law. It is the only way to answer questions as to how soft law actually causes effects and legislative changes at the national level, what kind of legal problems it creates and what we should do about them.