

Book Review

The Paris Agreement on Climate Change: A Commentary, edited by Geert van Calster and Leonie Reins

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Nobody would deny that the Paris Agreement marked a watershed moment in the international climate change regime. As such, it came as the outcome of a long and turbulent process of international negotiations within the UNFCCC regime and amidst a backdrop of staggering collective awareness about the urgency of the climate crisis.

Yet, besides setting the framework for future climate action globally beyond 2020, the Paris Agreement entails manifold legal intricacies, which require a comprehensive and critical analysis.

The Paris Agreement on Climate Change: A Commentary thus comes as a timely and welcome contribution. The book provides a full-fledged, article-by-article analysis of the Paris Agreement, yet also systematically relates the different pillars and main mechanisms introduced by the Paris Agreement within the multi-level climate change legal regime.

In addition to being edited by two highly regarded authorities in the field, the 22 contributing authors bring a wide range of backgrounds, cover all continents, and draw on varied expertise. For example, the commentary features contributions by environmental economists (Fateme Bakhtari), political scientists (Elisa Calliari and Lisa Vanhala), as well as hard sciences (Lucia Perugini, Daniel Puig). As for the contributors with a legal background, the book includes well-known and experienced authors in the field, both experts in international and European climate change law. In this respect, the consolidated experience and knowledge of the authors as paired with the novelty of the issues in the Paris Agreement ensures depth of expertise and rich insights.

Another important character of this book is its timing, as it comes in the wake of two important, yet overall disappointing COPs in Katowice (2018) and Madrid (2019). Such timing allows not only a proper appraisal of the contents of the Paris Agreement, but

also the evolving negotiations and discussions about the *Paris Rulebook*, which constitutes the concrete, hard law backbone of the Agreement, thus providing yet another valuable angle of understanding.

Being a commentary, the book follows the structure of the Paris Agreement. The commentaries provided are rigorous and deliver insightful contributions. To focus on a few prominent features, the book begins with a commentary on the Preamble to the Paris Agreement by Ben Boer. Boer covers every recital of the Agreement, with the additional merit of placing all of the provisions within the context of the negotiations during and leading to the Paris COP, as well as running in parallel (e.g., the negotiations concerning the UN Sustainable Development Goals). As such, the contribution moves well beyond a mere literal analysis of the Preamble's text; it charts the role of the Paris Agreement within the universe of international conventions, treaties and initiatives dealing with the wide-ranging impacts of climate change, including its impacts on consumption and production patterns. Moreover, it does so both from a horizontal, synchronic perspective and a diachronic perspective, analysing the evolution of the international environmental and climate change regime leading to the Agreement. This approach underscores the point, stressed by the same author in his conclusion, that the Paris Agreement should be conceived as 'a living instrument capable of an evolutive interpretation'.¹

Next, the book moves to Articles 1, 2 and 3 of the Agreement, relating to the Agreement's scope of obligations and key objectives. These are crucial provisions as they enshrine both the three key pillar objectives of the agreement: staying 'well below' 2° Celsius with the aim to achieve 1.5° Celsius global warming, increasing adaptation to climate change impacts, and enhancing the investment flows to foster a low-carbon economy consistent with the same general

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¹ See Geert van Calster and Leonie Reins (eds), *The Paris Agreement on Climate Change: A Commentary* (Edward Elgar 2021) 31.

temperature objective. Notably, all three Articles are analysed drawing from the originally proposed draft text as set out in the *Ad Hoc Working Group on the Durban Platform for Enhanced Action*, which formed the basis for the negotiations at COP21.² Such an approach unfolds the nuances of the negotiations. For example, as noted by Rowena Cantley-Smith in her commentary, where most of the terms included in the draft Article 1 somehow found a reference in the Agreement's text, this was not the case for the term 'climate forcers', which include short-lived pollutants and was explicitly addressed by the IPCC in its seminal *Global Warming of 1.5°C* report in 2018.³

Navraj Singh Ghaleigh undertakes the far-reaching exercise of interpreting the general global temperature objective included in Article 2. As he emphasises, properly interpreting the objective on mitigation and adaptation under Article 2 is fraught with challenges, since it requires an in-depth understanding of climate science and of the shifted approach 'from traditional modes of authority in public international law to a greater emphasis on climate science'.⁴ Finally, with regard to the Agreement's third goal related to climate finance, Ghaleigh denotes how it will become commonplace for the financial sector to orient their business plans towards the overarching climate change goals of the Paris Agreement. Finally, the comment concludes with an addendum on the UK Heathrow Airport runway case, where the Paris Agreement came into play in relation to the challenge to the UK government's decision enabling the expansion of Heathrow International Airport. This demonstrates the comprehensiveness of the collection, which aims to bridge the Agreement's literal text with the actual developments nationally. Next, Ghaleigh and Cleo Verkuijl appraise Article 3 of the Agreement, further assessing the bottom-up architecture of Nationally Determined Contributions (NDCs),

the legal bindingness of the (Intended) NDCs, as well as the key notion of *progression*. Moreover, it provides an interesting appraisal of the roots of the United States 'exceptionalism' in the UNFCCC regime pre-, during and post-Kyoto.

Benoît Mayer next provides analysis of Article 4 on mitigation. This is where the discussion engages with the inherent technicalities related to the legal obligations upon State parties to the Agreement regarding the NDCs, which ultimately include both obligations of conduct and result. Following, Articles 5 on sinks and reservoirs is analysed by Annalisa Savaresi and Lucia Perugini. The authors emphasise the shortcomings of the UNFCCC regime to address the Land Use, Land Use Change and Forestry (LU-LUCF) sector, while stressing that the PA has 'largely imported' the unresolved challenges associated with emissions and removals 'in the post-2020 architecture', although noting that specific guidance there-to is provided in the *Paris Rulebook*.⁵

Another important paradigm-shift of the Paris Agreement is the recognition of a global goal on *adaptation*, pursuant to Article 7. This provision is analysed in-depth by Cathrine Ramstad Wenger by looking at the historic backdrop of the legal regime on adaptation and the legal character of the global goal put forward in Article 7, which is deemed as 'aspirational and political'.⁶ Lastly, the commentary takes stock of the subsequent developments throughout COP24 under the National Communications on Adaptation regime. In this respect, the author concludes that although no legal obligation stems from the global goal on adaptation, the planning process established under Article 7.9 in fact provides such obligations as to specific implementation actions.⁷

Another notable contribution is on Article 8 on loss and damage. Loss and damage will be at the core of the negotiations at the upcoming COP27 in Egypt. Given the lack of clarity as to the definition of loss and damage under Article 8, the authors consider Articles 9, 13 and 14, as well as other climate change-related regimes (i.e., customary law, human rights law and the law of the sea) to draw further constitutive elements.

Beyond addressing key provisions of the Agreement's architecture, the book contains in-depth contributions related to ancillary aspects of the whole climate change regime, as addressed in the Agreement. For example, the issue of capacity-building under Article 11 is deeply analysed by Gokce Mete, who

2 See UNFCCC, 'Ad Hoc Working Group on the Durban Platform for Enhanced Action (ADP)' (2015) <<https://unfccc.int/documents/8660#beg>>.

3 See Rowena Cantley-Smith, 'Article 1: Scope of Obligations: Terms and Definitions' in Val Calster and Reins (n 1) 42.

4 See Navraj Singh Ghaleigh, 'Article 2: Aims, Objectives and Principles' in Val Calster and Reins (n 1) 74.

5 See Annalisa Savaresi and Lucia Perugini, 'Article 5: Sinks, Reservoirs of GHGs and Forests' in Val Calster and Reins (n 1), 143, 146.

6 See Cathrine Ramstad Wenger, 'Article 7: Adaptation' in Val Calster and Reins (n 1), 181.

7 *ibid* 199.

underscores the new country-driven, iterative process aimed to fostering national country ownership. Similarly, the issues of education and training (Article 13) and the new transparency mechanism (Article 14) are carefully analysed. Marjan Peeters provides an informative, original understanding of the global stocktake mechanism (Article 14) as the governance cornerstone of the Agreement. According to Peeters, despite the open-ended phrasing of Article 14 and the obligations enshrined therein upon signatory States, enhanced transparency and dialogue at the national level could constitute a crucial driver for the functioning of the global stocktake as a new instrument of international law.

Article 15 on compliance is addressed by Lisa Benjamin, Rueanna Haynes and Bryce Rudyk. Technicalities of the compliance procedure under Article 15 aside, the authors underscore the role of developing countries' participation and domestic capability as a major challenge to the implementation of the Agreement's regime, whereas external factors, such as financial and technical assistance, can provide a crucial lifeline to ensure domestic compliance in developing countries.

In addition to the individual contributions, which are thorough and well-referenced, the structure of the book provides a valuable compass to navigate the

comprehensive collection. In addition to an extended, analytical table of contents, and indices, the book provides tables of all international and domestic cases cited, as well as legislation comprising both the provisions of the agreement, other international agreements and national legislation (including EU legislation). This further manifests the holistic and comprehensive approach followed by the editors and the contributors in encompassing the relevance of the Paris Agreement in the mingled layers of the multi-level climate change regime.

In sum, *The Paris Agreement: A Commentary* is an essential for climate law bookshelves, which will reward as a long-lasting body of knowledge. As described on the hardback cover by Christina Voigt, chair of the World Commission on Environmental Law of the International Union for Conservation of Nature, Van Calster and Reins have succeeded in the complex challenge of rendering the complexities of the Paris Agreement understandable and accessible to a broader audience, beyond climate and environmental legal scholarship. This is a commendable achievement. The book is therefore a pivotal source of knowledge and information for both young students fascinated by the legal architecture of the Paris Agreement and experienced climate legal scholars alike.