

The International Law on Climate Change

Global climate change is a topic of continuously growing interest. As more international treaties come into force, media coverage has increased and many universities are now starting to conduct courses specifically on climate change laws and policies. This textbook provides a survey of the international law on climate change, explaining how significant international agreements have sought to promote compliance with general norms of international law. Benoit Mayer provides an account of the rules agreed upon through lengthy negotiations under the United Nations Framework Convention on Climate Change (UNFCCC) and multiple other forums on mitigation, geoengineering, adaptation, loss and damage, and international support. *The International Law on Climate Change* is suitable for undergraduate and graduate students studying climate, environmental or international law. It is supported by a suite of online resources, available at www.internationalclimatelaw.com, featuring regularly updated lists of complementary materials, weblinks and regular updates for each chapter.

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CAMBRIDGE
UNIVERSITY PRESS



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Shaftesbury Road, Cambridge CB2 8EA, United Kingdom

One Liberty Plaza, 20th Floor, New York, NY 10006, USA

477 Williamstown Road, Port Melbourne, VIC 3207, Australia

314–321, 3rd Floor, Plot 3, Splendor Forum, Jasola District Centre, New Delhi – 110025, India

103 Penang Road, #05–06/07, Visioncrest Commercial, Singapore 238467

Cambridge University Press is part of Cambridge University Press & Assessment,
a department of the University of Cambridge.

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www.cambridge.org

Information on this title: www.cambridge.org/9781108419871

DOI: 10.1017/9781108304368

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First published 2018

A catalogue record for this publication is available from the British Library

Library of Congress Cataloging-in-Publication data

Names: Mayer, Benoit, author.

Title: The international law on climate change / Benoit Mayer.

Description: New York: Cambridge University Press, 2018.

Identifiers: LCCN 2018000611 | ISBN 9781108419871 (hardback)

Subjects: LCSH: Climatic changes – Law and legislation. | Global warming – Law
and legislation. | Environmental law, International. |

International law. | BISAC: LAW / International.

Classification: LCC K3585.5.M39 2018 | DDC 344.04/ 6342–dc23

LC record available at <https://lcn.loc.gov/2018000611>

ISBN 978-1-108-41987-1 Hardback

ISBN 978-1-108-41229-2 Paperback

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Preface

Climate change is one of the greatest concerns of our time. For more than a quarter of a century, efforts have been made to mobilize international law as a tool to tackle climate change. Through the outcomes of protracted international negotiations and extensive doctrinal research, a new field of study has gradually emerged in international law. The international law on climate change is a system of State obligations to tackle climate change. It seeks to protect not only the sovereign rights of every State, but also the effective enjoyment of human rights, the interests of future generations and humankind as a whole, as well as other forms of life on Earth. The task is a formidable one: an attempt at altering the way we are changing our world. Some of the most complex negotiations ever undertaken have only touched the surface of the problem. The challenges are daunting, but the stakes are high and failure is not an option. It is hardly an overstatement that the fate of humankind depends on the international law on climate change.

As a field of study, the international law on climate change has largely focused on current developments, at the expense of laying the foundations of a new discipline. Toward the end of each year, the representatives of virtually every State meet for a session of the Conference of the Parties to the 1992 UN Framework Convention on Climate Change (UNFCCC). Agreements are regularly concluded, like, most recently, the Paris Agreement of 2015. This ritual event, heavily reported by the international media, set the cadence in the field. The need to report on the latest outcomes of international negotiations and to analyze them has impeded the conduct of a more systematic and comprehensive inquiry into the international law on climate change.

Rules agreed by States through dedicated negotiations parts of a joint effort to address climate change – the UNFCCC regime – are an important component of the international law on climate change, but the latter is not confined to the former. Another component of the international law on climate change relates to relevant rules adopted in diverse other international regimes, for instance, under the Convention on International Civil Aviation of 1944 or the Montreal Protocol on Substances that Deplete the Ozone Layer of 1987. Overall, the general and abstract norms and principles that States have accepted as general international law, such as the no-harm principle and the law on State responsibility, form the last component of the international law on climate change.

These components differ in terms of their origin and significance. The rules dedicated to tackle climate change, adopted through international negotiations, are likely to reflect the interests of powerful nations, often through a complacent approach to their excessive levels

of greenhouse gas emissions. By contrast, the norms reflected in the general practice of States that they have historically accepted as law impose fairer principles and, typically, far more demanding obligations on States, including on the most powerful ones. As explained throughout this book, States have never agreed, either explicitly or tacitly, that international climate agreements would set aside the principles of general international law. Instead, the UNFCCC regime should be approached as a regime which seeks to promote compliance with general international law. It does so, in particular, by defining collective objectives and national commitments over specified periods.

This book seeks to provide what could be the first comprehensive account of the international law on climate change as a discipline. As such, although this book contains a detailed presentation of the rules agreed upon by States within the UNFCCC regime and beyond, it does not stop there. There is little doubt that, if an international court or tribunal were to determine the obligations of States in relation to climate change, it would recognize obligations rooted in general international law. Therefore, this book also contains a detailed analysis of the relevant norms of general international law. Thus, it seeks to bring all the components of the international law on climate change together in a unique, comprehensive and coherent account of what international law has to say about climate change.

As a full-fledged discipline rather than a mere field of study, the international law on climate change would not only analyze ongoing developments, but would also contribute more actively to these developments. It would situate international climate agreements in the broader context of its two other components, with due consideration in particular to the relevant norms of general international law. A more consistent understanding of the international law on climate change could facilitate international negotiations by determining a benchmark for reasonable expectations of a fair and equitable outcome. It would help municipal courts decide cases based not just on the commitments specifically agreed upon by national governments, but also, beyond, on customary international law. One day, an international court or tribunal could engage with this discipline in a contentious or advisory case. Beyond climate change, this would help fulfill the promise of international law of promoting justice in international relations.

This book has been designed to be readily accessible by undergraduate and postgraduate students in law with or without any background in international or environmental law. If used as a teaching material, it should offer a number of opportunities for students to engage in debates. Thus, while this book could help train professionals and researchers in the field, it could also serve as a meaningful case study in a field of law to foster a critical intellectual engagement with the law more generally. In addition, it is hoped that this first attempt at a comprehensive presentation of the international law on climate change as a whole may also be useful to legal scholars or anyone else interested in how international law addresses one of the defining problems of our time.

Benoit Mayer

Acknowledgments

This book benefited from the insights of many in the field and beyond. I had the chance to test some of my ideas through diverse interactions with, among many others, Antony Anghie, Eyal Benevisci, Ben Boer, Anatole Boute, Chen Yifeng, Simon Chesterman, Marie-Claire Cordonier Segger, Christel Cournil, James Crawford, François Crépeau, Myriam Feinberg, Stephen Gardiner, Markus Gehring, Gregory Gordon, Hsu Yao-Ming, Richard Janda, Koh Kheng Lian, Douglas Kysar, Jolene Lin, Lye Lin Heng, Frédéric Mégret, Shinya Murase, Jarna Petman, Song Ying, M. Sornarajah, Usha Tandon, Qin Tianbao, Mikko Rajavuori, Surabhi Ranganathan, Christina Voigt, Shan Wenhua, Yee Sienho, Prabhakar Singh, Wang Canfa, Zhang Hao, Alexander Zahar and Zhao Yuhong. I also benefited immensely from comments received from several anonymous peer-reviewers invited by Cambridge University Press and from peer-reviewers commenting on previous publications.

This book builds on my lecture notes developed while teaching a course on “International Climate Change Law and Politics” in the International Law Institute at the University of Wuhan, China. Support was provided first by the University of Wuhan, then by the Chinese University of Hong Kong (CUHK). Yao Junqian in Wuhan, then Winnie Cheung, Athena Kong and Sean O’Rilley in the Chinese University of Hong Kong provided precious assistance. Financial assistance was received from the Faculty Funding Support for Teaching Development and Research-Related Activities in CUHK.

The book could not come to reality without the help of commissioning editor Joe Ng, content manager Thomas Haynes, project manager Nicola Howcroft and copy-editor Jon Lloyd, to whom I would like to express my profound gratitude.

Abbreviations and Acronyms

AAU	Assigned Amount Unit	CORSIA	Carbon Offsetting and Reduction Scheme for International Aviation
AOSIS	Alliance of Small Island States	CPI	Climate Policy Initiative
ATS	Australian Treaty Series	DSB	Dispute Settlement Body
AWG-DP	Ad Hoc Working Group on the Durban Platform for Enhanced Action	ECJ	European Court of Justice
AWG-KP	Ad Hoc Working Group on Further Commitments for Annex I Parties under the Kyoto Protocol	ECtHR	European Court of Human Rights
AWG-LCA	Ad Hoc Working Group on Long-Term Cooperative Action under the Convention	EECC	Eritreat-Ethiopia Claims Commission
AWG-PA	Ad Hoc Working Group on the Paris Agreement	EEDI	Energy Efficiency Design Index
BECCS	Bioenergy with Carbon Capture and Storage	EIA	Environmental Impact Assessment
BINGOs	Business and Industry NGOs	ENGOS	Environmental NGOs
C2ES	Center for Climate and Energy Solutions	EPA	Environmental Protection Agency
CAIT	Climate Analysis Indicators Tool	ERT	Expert Review Team
CBD	United Nations Convention on Biological Diversity	ERU	Emission Reduction Unit
CCS	Carbon Capture and Storage	ETS	Emission Trading Scheme
CDM	Clean Development Mechanism	EU	European Union
CDP	Carbon Disclosure Project	GATT	General Agreement on Tariffs and Trade
CER	Certified Emission Reduction	GCF	Green Climate Fund
CESCR	Committee on Economic, Social and Cultural Rights	GDP	Gross Domestic Product
CFCs	Chlorofluorocarbons	GEF	Global Environment Facility
CIFOR	Center for International Forestry Research	GhG	Greenhouse Gas
CMA	Conference of the Parties Serving as the Meeting of the Parties to the Paris Agreement	HBFCs	Hydrobromofluorocarbons
CMP	Conference of the Parties Serving as the Meeting of the Parties to the Kyoto Protocol	HCFCs	Halomethane
COP	Conference of the Parties	HFCs	Hydrofluorocarbons
		HRC	Human Rights Council
		IACrHR	Inter-American Court of Human Rights
		IAR	International Assessment and Review
		ICA	International Consultation and Analysis
		ICAO	International Civil Aviation Organization
		ICJ	International Court of Justice
		IEA	International Energy Agency
		IGES	Institute for Global Environmental Strategies
		IISD	International Institute for Sustainable Development
		ILA	International Law Association
		ILC	International Law Commission
		ILM	International Legal Materials
		IMO	International Maritime Organization

xviii Abbreviations and Acronyms

INC/FCCC	Intergovernmental Negotiating Committee for a Framework Convention on Climate Change	PCIJ	Permanent Court of International Justice
INDC	Intended Nationally Determined Contribution	PFCs	Perfluorocarbons
IPCC	Intergovernmental Panel on Climate Change	QELRC	Quantified Emission Limitation or Reduction Commitment
IPOs	Indigenous Peoples Organizations	RCPs	Representative Concentration Pathways
IRENA	International Renewable Energy Agency	REDD+	Reducing Emissions from Deforestation and Forest Degradation in Developing Countries
ISO	International Standardization Organization	REN21	Renewable Energy Policy Network for the 21st Century
ITLOS	International Tribunal for the Law of the Sea	RINGOs	Research and Independent NGOs
JI/KP	Joint Implementation under the Kyoto Protocol	RMU	Removal Unit
JI/UNFCCC	Joint Implementation under the United Nations Framework Convention on Climate Change	SBI	Subsidiary Body for Implementation
LGMA	Local Government and Municipal Authorities	SBTA	Subsidiary Body for Scientific and Technological Advice
LULUCF	Land Use, Land-Use Change and Forestry	SEEMP	Ship Energy Efficiency Management Plan
MARPOL	International Convention for the Prevention of Pollution from Ships	SEI	Stockholm Environment Institute
MEF	Major Economies Forum on Energy and Climate	SIDS	Small Island Developing States
MRV	Measurement, reporting and verification	SRFC	Sub-Regional Fisheries Commission
NAZCA	Non-State Actor Zone for Climate Action	SUV	Sports Utility Vehicle
NDC	Nationally Determined Contribution	tCO2eq	Tonne of carbon dioxide equivalent
NGO	Non-Governmental Organization	TUNGOS	Trade Union NGOs
OCHA	Office for the Coordination of Humanitarian Affairs	UNCED	United Nations Conference on Environment and Development
OECD	Organization for Economic Co-operation and Development	UNCHD	United Nations Conference on the Human Environment
OHCHR	Office of the High Commissioner for Human Rights	UNCLOS	United Nations Convention on the Law of the Sea
OSPAR Convention	Convention for the Protection of the Marine Environment of the North-East Atlantic	UNDP	United Nations Development Programme
		UNEP	United Nations Environment Programme
		UNESCO	United Nations Educational, Scientific and Cultural Organization
		UNFCCC	United Nations Framework Convention on Climate Change
		UNHCR	United Nations High Commissioner for Refugees
		UNRIAA	United Nations Reports of International Arbitral Awards
		UNTS	United Nations Treaty Series
		UNU-EHS	United Nations University Institute for Environment and Human Security
		USSR	Union of Soviet Socialist Republics
		WCED	World Commission on Environment and Development
		WIM	Warsaw International Mechanism for loss and damage associated with climate change impacts
		WMO	World Meteorological Organization
		WRI	World Resources Institute
		WTO	World Trade Organization
		WWF	World Wide Fund for Nature
		YOUNGOs	Youth NGOs

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