CARDIFF UNIVERSITY
PRIFYSGOL CAERDYDD

Online Research @ Cardiff

This is an Open Access document downloaded from ORCA, Cardiff University's institutional repository: https://orca.cardiff.ac.uk/122170/

This is the author's version of a work that was submitted to / accepted for publication.

Citation for final published version:

Varvastian, Samvel 2018. Additional remarks on 'International Climate Change Law', edited by Bodansky et al. {Book Review]. Climate Law 8 (3-4) , pp. 358-359. 10.1163/18786561-00803015 file

Publishers page: https://doi.org/10.1163/18786561-00803015 <https://doi.org/10.1163/18786561-00803015>

Please note:
Changes made as a result of publishing processes such as copy-editing, formatting and page numbers may not be reflected in this version. For the definitive version of this publication, please refer to the published source. You are advised to consult the publisher's version if you wish to cite this paper.

This version is being made available in accordance with publisher policies. See
http://orca.cf.ac.uk/policies.html for usage policies. Copyright and moral rights for publications made available in ORCA are retained by the copyright holders.

information services
gwasanaethau gwybodaeth

**Daniel Bodansky, Jutta Brunnée and Lavanya Rajamani**
*International Climate Change Law*, Oxford, UK: Oxford University Press, 2017, 416 pp., ISBN 978-0-19966430-6

Imagine a person working on or studying international climate change law. What are the adjectives that are most likely to come into that person's mind when describing this area of law? Novel? Interdisciplinary? Ever-changing? Fragile? Apparently, the use of any, let alone all of these descriptions, makes writing a comprehensive study on international climate change law quite a challenging issue. The authors of this book - Daniel Bodansky, Jutta Brunnée and Lavanya Rajamani - who are world's leading experts in the subject, tend to view it as such. And yet, they do remarkably well in presenting international climate change law exactly as it is - not necessarily the most optimistic field of international law but full of potential to be one of the main determinants of global climate policy.

The book consists of ten chapters that can be thematically divided into the following parts: the introductory part (chapter 1), the part framing international climate change law within the context of international (environmental) law and addressing issues such as sources of law, key principles and the process of law-making (chapters 2 and 3); the part focusing on the UN climate regime, including its evolution and treaties (chapters 4 - 7); climate governance beyond the UN climate regime (chapter 8); the intersection between international climate change law and other areas of international law (chapter 9) and the conclusion (chapter 10). Notably, many of these chapters draw on the authors' earlier works, some of which date back to the nascence of international climate change law in the early 1990s.

The introductory chapter outlines the major challenges that climate policy has to contend with (the environmental impact of climate change, the economic analysis of costs and benefits related to climate change action and the multifaceted ethical dimension of climate justice) and the subject matter of international climate change law (climate change mitigation, adaptation to climate change, financial and other forms of support for mitigation and adaptation, and international oversight meant to promote implementation, compliance and effectiveness). The part concludes with a brief overview of the book's following chapters.

Chapters 2 and 3 lay down the basic mechanisms that keep climate change law operational within the framework of international law. International climate change law is recognized to be anchored in international environmental law; furthermore, it follows a range of general rules established by international law, including state sovereignty, law-making and state responsibility. However, the authors do not consider general rules of international law well suited when dealing with global environmental problems, including, of course, climate change.[1] Thus, for instance, while customary international law as well as the established principles of international environmental law are instrumental in setting the standard of due diligence to prevent transboundary environmental harm, they 'are too open-textured to allow for the finely calibrated and wide-ranging response actions required to tackle climate change.'[2]

[1] At 36.
[2] At 69.

In contrast, treaties 'can enshrine concrete commitments' and provide 'more specific guidance,' while building on the concepts established by the above-mentioned sources of international law.[3] Thus, for instance, treaties tend to build more specific regulatory measures over time, by following the framework-protocol model; furthermore, treaties usually establish specific institutions that facilitate the collaboration required for regulatory purposes. In other words, treaties are critical to the effective environmental regime-building and their making is a long and complex international legal process, which does not end with their adoption. This process is explored in greater detail in chapter 3, where the authors discuss the key stages of treaty-based law-making, including treaty negotiations, adoption of treaties and the subsequent procedures as well as treaty development.

Chapters 4 to 7 introduce the main pillar of international climate change law - the UN climate regime, established by the three international treaties - UNFCCC (chapter 5), Kyoto Protocol (chapter 6) and the Paris Agreement (chapter 7). However, before addressing the regime itself, the authors take a look at its evolution (chapter 4), starting from agenda-setting phase in the 1980s, which served as a prelude to the negotiation and entry into force of the UNFCCC (constitutional phase), the regulatory phase that followed it and witnessed the negotiation and elaboration of the Kyoto Protocol and, finally, the second constitutional phase marked by the post-2005 negotiations eventually leading to the adoption of the Paris Agreement - 'a momentous event in the development of the UN climate regime.'[4]

Chapters 5, 6 and 7, discussing the above-mentioned UN climate treaties, are construed in a very similar fashion, following the chronological order of the respective treaties' appearance on the global stage. First, after briefly introducing each treaty, they take a look at the overarching issues - namely, the legal bindingness of the treaties, their architecture and scope as well as the level of differentiation in commitments that the respective treaties impose on the parties. Second, all three chapters offer an insight into the respective treaties by providing an in-depth commentary to their texts. Overall, these chapters elucidate the nature of the three treaties and their impact on the UN climate regime.

Exploring international climate governance beyond the UN climate regime, chapter 8 reveals its multifaceted nature. First, it is multi-level - operating 'through different geographic scales, ranging from global to regional to national to sub-national'[5] and creating a polycentric system of governance. Such an approach has a number of benefits, for example, it can reduce the risk of gaps in climate regime and ensure a more effective way of administration, building on complementary experience of local and global governing bodies. Second, it is multi-actor, involving both public and private institutions, including states, international organizations, courts, environmental groups and other civil society organizations, businesses, etc. Third, it involves different degrees of legalization, including both hard and soft law norms and different regulatory forums, including, for instance, the regulation of bunker emissions by International Maritime Organization and International Civil Aviation Organization and control of the ozone-depleting substances under the Montreal Protocol and regional action to regulate black carbon. In

[3] At 55-56.
[4] At 115.
[5] At 259.

other words, international climate governance beyond the UN climate regime is certainly not confined within a single framework and has numerous platforms to operate from.

The intersection between international climate change law and other areas of international law described in chapter 9 demonstrates, once again, the gradual integration of the climate regime into global governance and the 'crosscutting nature of climate change as an issue.'[6] The chapter focuses on three specific areas of international law - international human rights law, international migration and displacement law and international trade law. The relevance of considering international human rights law as one of the key areas of intersection is obvious and globally recognized: the adverse effects of climate change increasingly threaten a range of human rights, including the right to life, food and water, housing, etc. Furthermore, applying a human rights approach to climate governance offers various practical advantages, although it is also prone to some potential limitations. In a similar vein, the disruption caused by climate change is expected to displace a large number of people, the so-called 'climate refugees', many of whom might end up crossing national borders, thus prompting the potential, yet contested, applicability of international refugee law as well as the above-mentioned international human rights law. Finally, the relationship between international climate change law and international trade law, giving rise to possibly the 'most controversial and difficult interface issues',[7] also presents an important point of consideration and stems from the fact that domestic measures to address climate change, for example, the adoption of carbon tax or emissions trading system and subsidies for the renewable energy sector,[8] often affect international trade.

Overall, the book gives an excellent account of international climate change as an emerging, yet already quite independent area of international law. Climate change itself continues to be a matter of both environmental and social concern and international climate change law, while historically rooted in international environmental law, tends to extend beyond its realm, as the book clearly illustrates. Being a part of international law, international climate change law is shaped by the political will, depending 'on the desire of states to combat climate change.'[9] Of course, states are not the only players: as seen above, the growing number of actors, including, for example, regional governments, NGOs and courts are becoming increasingly involved in climate governance. So far, their role may be rather limited but in time it might be given a much heftier consideration. It is questionable, though, whether the expansion of climate change litigation or, for example, the adoption of regional emissions trading systems could become the future determinants of international climate change law. However, it seems clear that the UN climate regime alone will not suffice to achieve critical success in international climate change law, which may be the foundation for further research, building on this excellent work.

*Samvel Varvastian*
Cardiff University
varvastians@cardiff.ac.uk

[6] At 295.
[7] At 327.
[8] At 341-347.
[9] At 361.