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ON CLIMATE CHANGE: A COMMENTARY* (EDWARD ELGAR 2021)

Reviewed by: Godswill Agbaitoro, Lecturer in Law, School of Law, University of Essex

BOOK REVIEW



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Geer Van Calster and Leonie Reins, eds., *The Paris Agreement on Climate Change: A Commentary* (Edward Elgar 2021)

There is no doubt that our world today faces an unprecedented threat from climate change. For this reason, there is a need for greater cooperation amongst the developed, developing and least developed nations to increase effort towards climate change mitigation. This call has continued to be on the front burner and culminated in the signing of the 2015 Paris Agreement (PA) and the recent COP 26 held in Glasgow 2021. The idea behind the PA is to come up with bigger and bolder action that is required to keep the world on the right track in terms of reducing carbon emissions. While there have been questions relating to the effectiveness of the PA, and criticisms in terms of it not doing enough to cut down carbon emissions, the PA remains one of the notable international efforts that the world has seen towards addressing climate change.

In light of the above, the editors of this book - Geer Van Calster and Leonie Reins put together a commentary on the the PA with a view to providing article-by-article textual analysis. The book examines the commitments that parties to the Agreement have made to undertake ambitious efforts to combat climate change and adapt to its effects. The book is divided into 29 chapters, representing the 29 Articles. Chapter 1 focuses on article 1 of the PA and examines its scope and nature of obligations, including the definitions of various terms. Chapters 2 and 3 based on articles 2 and 3 discuss the aims, objectives and principles of the PA. Here the authors distinguish the aims and objectives of the PA from the previous agreements on climate change such as the Kyoto Protocol and the UNFCCC. A significant point raised on article 3 of the PA which remains a sharp distinction from previous treaties on climate change is the introduction of the novel device of 'Nationally Determined Contributions' (NDC) into the international climate change regime. This concept applies to all the Parties and was seen as a milestone to get them to communicate their Intended Nationally Determined Contributions (INDC) towards climate change mitigation. Chapter 4 looks at article 4 centred on the mitigation strategy as well as its collective aims both procedural and substantive obligations towards climate change based on the NDC. Chapter 5 analyse article 5, looking at the role of sinks,

reservoirs of greenhouse gases, including forests by leveraging the mechanisms and processes established under previous agreements such as the UNFCCC and the Kyoto Protocol. Chapter 6 examines article 6 on the voluntary cooperation among the Parties relating to NDCs. It discussed the various cooperative approaches established towards NDCs and some of the reasons which prevented the Parties from reaching a consensus until date. Chapter 7 examines article 7 which establishes a global goal on adaptation. It examines the core principles and elements of adaptation and shows how it should be anchored on national realms with an analysis of the framework for strengthened international cooperation. Chapter 8 examines article 8 on the importance of averting, minimizing and addressing loss and damage associated with the adverse effects of climate change. Chapter 9 looks at article 9 on the issue of climate finance based on the commitment from developed States to provide and mobilize climate finance for the benefit of developing State. Chapter 10 examines article 10, exploring the context in which the legal debate on technology development and transfer between developed and developing country Parties has progressed until date. Chapter 11 focuses on article 11 of the PA and what it has put in place to enhance capacity-building as a way to support action by developing countries and the most vulnerable countries in line with their national objectives. In Chapter 12, the authors focus on actions under article 12 needed to accelerate solutions to climate change including education, training, raising public awareness and enabling public participation as well as public access to information. Chapter 13 looks at article 13 and the mechanisms available for reporting the actions taken by Parties towards climate mitigation and draw some distinctions between the reporting and review processes under the UNFCCC and Kyoto Protocol. Chapter 14 examines article 14 on the global stocktake relating to the gathering and disclosing of information regarding the collective progress towards achieving the purpose of the PA and its long-term goals. Chapter 15 explores the interpretation of article 15 through an analysis of the functions of compliance and implementation mechanisms for Parties. The authors highlight key implementation issues regarding the ability of article 15 to address the needs of developing States through managerial model of implementation and compliance, and the type of obligations developing States are subjected to under the compliance sections of the PA.

In Chapter 16, the author looks at article 16 and provides a detailed account of the institutional provisions and bodies of the PA including the role of the CMA - that is the meeting of the Parties to the PA which is known as the main governing body. Chapter 17 looks at article 17 on the establishment of the secretariat sets out in article 8 of the UNFCCC and provides an account of the functions of the secretariat for the CMA in the PA. Chapter 18 examines article 18 on the role of the Subsidiary Body for Scientific and Technological Advice (SBSTA) and the Subsidiary Body for Implementation (SBI) in contrast to UNFCCC and Kyoto Protocol. Chapter 19 focuses on article 19 and looks at other institutional provisions in the PA relating to subsidiary bodies and other institutional arrangements established by the UNFCCC. Chapter 20 on article 20 examines the first of the final provisions of the PA on the legal procedures for concluding the treaty including a consideration of the key consequences of becoming a Party to the PA. Chapter 21 on article 21 analyses the various procedures that guide the PA's entry into force and ratification process for States and regional economic integration organisations that seek to ratify the agreement. Chapters 22 and 23 (i.e articles 22 and 23) examine the formal process for amending and adding an amendment through the use of Annex to the PA including looking out the framework that has been set out to effect such changes to the PA. A significant point raised on these articles is the sharp departure from other international treaties on such matters. Chapter 24 on article 24 examines the dispute settlement procedures between Parties with a view to determining the compliance level. Chapter 25 looks at article 24 and provides a detailed account of the voting rights as well as the voting procedures rules agreed to by the Parties. Chapter 26 focuses on article 26 which is on the role of depositary – that is the treaty's custodian. Chapter 27 on article 27 examines the legal basis for reservations in international treaty law. It analyses the contentious use of interpretative declaratory statements by Parties to circumvent the prohibition on treaty reservations. Chapter 28 looks at article 28 examines the ramifications available in the PA for Parties to terminate their status. Chapter 29 focuses on article 29 and examines key aspects of the PA's formal conclusion process such as the authentication and adoption of the final text and contrast it with previous agreement on climate change.

This is a wide-ranging book that will be of interest to scholars, teachers, students and policy makers who want to get a better understanding of the PA, its scope, definitions, main objectives, and institutional provisions. The book is written in a style that will help readers, particularly newcomers in this field understand the PA, together with key distinctions of its provisions from previous treaties on climate change such as the Kyoto Protocol and UNFCCC. The book is also written in a style that makes it easily accessible to people with limited knowledge in the area of climate change. Undoubtedly, it will be useful in courses on climate change law and policy, energy law, international environmental law, sustainable development law, especially as it presents wide-ranging informative and thought-provoking issues arising from the PA and how they relate to the above subject areas.

A significant contribution of the book to scholarship is the analyses on implementation of the PA by Parties so far through an article-by-article style. This was done thoroughly and in clear contrast with other previous agreements with the similar objectives, highlighting different levels of implementation by Parties. The analyses go beyond the level of implementation to engage with scholarship in order to draw out some of the challenges currently faced by the PA and the failure to meet its target. The reality is that most of the challenges to the PA are simply associated with the political economy of various party to the PA. Another remarkable contribution is the discussion on the awareness of the present climate science in relation to some of the articles of the PA. The authors noted that climate science has developed at pace since previous treaties on climate change was concluded and provided the opportunity understand human impacts on climate change. The book further reveals different State-focused objectives of the PA which is a sharp distinction from those set out in the Kyoto Protocol and UNFCCC. In principle, the later agreements which expects States to be subjected to public international law in applying them is a key departure from the normal practice.

Perhaps, one of the greatest strength of the book is the comprehensive analysis of the 29 articles of the PA, together with remarkable distinctions of some aspects of the provisions from previous international treaties on climate change such as the Kyoto Protocol.

The analysis on each article is worth commending as it is done in a way to help readers make practical sense of the PA. The analysis engaged with scholarship and takes into account the need for a robust and uniform understanding of the PA's purpose and context. It is my view that the book will serve as a valuable primer on global climate justice and an excellent resource for faculty eager to introduce climate change law and policy into their courses.

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