

Legal Responses and Global Responsibility

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Oliver C. Ruppel | Christian Roschmann |
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Climate Change: International Law and Global Governance

Volume I: Legal Responses and Global
Responsibility



Nomos

Prof. Dr. Oliver C. Ruppel |
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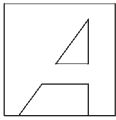
Climate Change: International Law and Global Governance

Volume I: Legal Responses and
Global Responsibility



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FOREWORD

It is with great pleasure and honour that I am writing a foreword for this eminent work, which seeks to promote the international rule of law, contribute to durable global peace, avoid conflict, lead to more effective protection of human rights, as well as sustain economic progress and development.

The two volumes of *Climate Change: International Law and Global Governance* describe important topics in respect to mankind and the future that lies ahead. Perhaps, the most important topics are the regulatory and diplomatic aspects of climate change.

In June 2013, UN Secretary-General Ban Ki-moon said “the scientific community plays a key role in finding new ways to combat climate change.” When looking at this publication I must add that the same issue, most likely, also applies to the legal community! It serves as a valuable tool in harnessing the full strength of the global community, catalysing ambitious action, persuading the reduction of emissions, and strengthening climate resilience.

In 1979, Pope John Paul II named St. Francis of Assisi the patron saint “of those who promote ecology”. Interestingly, the recently elected Pope Francis chose his name in honour of the historic preacher, who similarly conducted and was famous for his rather unconventional way of life. Born into wealth, St. Francis of Assisi eventually renounced all of his belongings, aspiring to live a life of wilful poverty in the quest for increased social justice. With respect to this quest, this publication also addresses the promotion of ecology, (un-) conventionalism, distribution of wealth, alleviation of poverty, and the promotion of global social justice.

In light of the impacts of climate change, international regimes face serious concerns with issues such as human rights, global trade, territorial sovereignty, or migration. Legal responses and global responsibilities, therefore, gain an increased political meaning as they encompass legal and policy responses of climate change (e.g. via liability or jurisdiction, and litigation).

In March 2013, the EU Commissioner for Climate Action, Connie Hedegaard, presented a speech at a Conference at Harvard University where she commented inter alia on the “pattern of more frequent and more severe extreme weather worldwide.” She said: “What we see fits with the scientific community’s projections of what a warming world will be like - except that their projections are actually becoming reality even faster than they themselves expected. As President Obama has said, we can either believe that these events were just a

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coincidence, or we can choose to believe in the overwhelming judgment of science and act before it's too late."

The challenge of strengthening national and international climate change policy, sustainable development, and increasing equity around the world are above the capacity of national governments. Thus, international climate change cooperation and protection efforts are crucial not only in the context of national but also global security.

Only recently German Chancellor Angela Merkel called for an internationally binding climate pact to be completed by 2015. "Waiting is not an option," she said. In addition, German Environmental Minister Peter Altmaier mentioned that 2015 will be an important year in climate negotiations. He said: "The international awareness that we need to reach, as a milestone by 2015, is growing," adding that progress "in many areas is still too slow and not enough."

In light of the aforementioned, I commend the editors of this significant work! This publication is not merely an inventory but, furthermore, one of the first academic attempts to systematically address both international climate change law and global climate change governance from a variety of doctrinal, transdisciplinary and thematic perspectives. As a political foundation the Konrad-Adenauer-Stiftung is committed to fostering democracy and the rule of law, implementing social and market-economic structures, and promoting human rights. In this respect, the protection of the environment, as well as issues of climate change and sustainable development are major concerns to this foundation. It is, thus, a privilege for the Konrad-Adenauer-Stiftung to support this important publication. This is a remarkable reflection of the commitment and expertise displayed by the editors and contributors to whom we are very grateful.

Hans-Gert Poettering was born on 15 September of 1945 in Bersenbrueck (Lower Saxony, Germany). Since 1979 he has been a Member of the European Parliament whose President he was from 2007 to 2009. Since 2010 he is President of the Konrad-Adenauer-Stiftung. Hans-Gert Poettering belongs to the Group of the European People's Party (EPP) and is a member of the Christian Democratic Union (CDU, Germany).



Berlin, 17 June 2013

PREFACE

International climate change law is not only a new and emerging legal discipline. In fact, climate change in many ways permeates public and private law, as well as national and international law, creating intersections of law in its diverse procedural and substantive fields. This two-volume publication on *Climate Change: International Law and Global Governance* deals with international law and the multiple regulatory regimes which presently reflect fragmentation in the absence of a universal climate change regime. International climate change law, global climate governance and diplomacy are interrelated and extremely complex: the publication explores these areas from a variety of doctrinal, transdisciplinary and thematic perspectives.

Volume I: *Legal Responses and Global Responsibility* attempts to assess the most pressing impacts of climate change on various international law regimes and their responses thereto. In doing so, the volume inter alia reflects on international climate change law as a new international law discipline; climate change and human rights; climate change, international trade and investment law; the law of the sea and sea-level rise; judicial review and international climate change litigation; and multiple crosscutting issues such as mitigation regulation, natural resource management and climate-engineering.

As a point of departure, **Volume II: *Policy, Diplomacy and Governance in a Changing Environment*** reflects on the United Nations Convention on Climate Change (UNFCCC) and the most pressing impacts of climate change on international diplomacy and global governance. This is highlighted from various transdisciplinary and geopolitical perspectives with a special focus on the challenges of strengthening national and international climate change policy, promoting sustainable development and increasing equity around the world, which go beyond the capacity of national governments. Various international climate change cooperation and protection efforts are analysed, also in the context of global security, climate-induced migration movements, adaptation, and the loss and damage debate.

The effectiveness of the international response to climate change depends upon the legal tools available and the political will to ensure effective implementation. An enabling legal environment, underpinned by good governance and respect for the rule of law, is a prerequisite for greater international

PREFACE

climate change equity. In this spirit, it is hoped that this publication can make a humble contribution towards ensuring more global justice, human security and international peace.

The Editors

Oliver C. Ruppel Christian Roschmann Katharina Ruppel-Schlichting

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A multi-authored publication such as this is an enormous team effort. With so many contributors from all continents of the world, our thanks go first and foremost to all the distinguished authors.

Moreover, we are very grateful to the Konrad-Adenauer-Stiftung which generously supported this enormous project in its various phases including the publication itself. In September 2012 the Konrad-Adenauer-Stiftung Rule of Law Program for Sub-Saharan Africa in collaboration with the Faculty of Law of the University of Stellenbosch, South Africa, held two consecutive conferences, one on *Climate Change and Governance* and another on *Climate Change, Legal Responses and Global Responsibility* in Stellenbosch, South Africa. The conferences deliberated on the effects and the legal aspects of climate change on governance and other pertinent issues. The participants – many of them also represented in this publication – comprised international experts drawn from around the world.

Our special thanks go to Professor Dr. Hans-Gert Poettering (Member of the European Parliament and President of the Konrad-Adenauer-Stiftung); Dr. Gerhard Wahlers (Deputy Secretary-General of the Konrad-Adenauer-Stiftung); and Dr. Christian Hübner (Coordinator for Environmental, Climate and Energy Affairs of the Konrad-Adenauer-Stiftung) for their continuous support.

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