

*International Law in the Era of Climate Change*

edited by Rosemary RAYFUSE and Shirley V. SCOTT.

Cheltenham, UK/Northampton, MA, USA: Edward Elgar, 2012. xxiv + 378 pp. Hardcover: £97.

Rayfuse and Scott's volume opens with a clear disclaimer: "this is not a book about international climate change legal regime" (p. xi). To the contrary, the goal is to reveal the impact that climate change has on international law. In the words of the editors, "it is the contention of this book that the direct and indirect consequences for international law of climate change may well be of such an order that a future historian of international law may be able to identify an era before and after international law began to respond to the issue" (p. 8). The first part of the book considers the impact of climate change on several specific regimes of international law: human rights law, refugee law, trade and investment law, environmental law, law of the sea, space law, humanitarian law, and law on the use of force. The second part discusses the impact that climate change may have on international legal principles and processes, in particular on statehood, participation, compliance and enforcement, state responsibility, and dispute resolution processes.

One obstacle to the project of the editors is that, as they acknowledge, "international law is only in the early stages of its interaction with climate change and this book can provide only a preliminary enquiry" (p. xi). Nevertheless, some contributions do reveal the actual impact that climate change – and, to a larger extent, the responses to it – has already had on certain substantive regimes of international law. The best example is certainly Gehring, Cordonier Segger and Hepburn's contribution, which discusses recent and on-going trade disputes involving efforts to curb greenhouse gas emissions and their possible conflict with international trade or investment law. Most of the contributions, however, focus on possible future developments rather than actual ones. Thus, for instance, several authors dissert possible legal developments ensuing from the development of geo-engineering; Rayfuse addresses the consequences of sea-level rise and melting of sea ice on the delimitation of exclusive economic zone; and Crawford and Rayfuse deal with the future of low-lying island states if the totality of their territory becomes uninhabitable in the context of climate change. Yet, one may regret that the book contains little of the expected theoretical reflection on the structural changes that international law could undergo because of climate change, or on the possible evolution of the very concept of international law. Could, for instance, the experience of a greater cooperation in climate-related matters trigger more cooperation in other domains? Will transnational forms of governance, or other institutional innovations of the climate regime, be transplanted elsewhere? In one word, how will *international law* (as a whole – as opposed to *specific rules of international law*) be impacted?

Of course none of these questions can easily be answered, and one is inclined to show clemency. After all, prediction is a slippery ground. On the one hand, the questions raised by the book are pressing. One is indeed inclined to believe that global warming, changes in weather pattern, and the intensification of climate-related hazards, concentrating their effects on those who are already the most vulnerable in the world, cannot be without tangible consequences on the structure of global governance. Something is bound to happen. International law is after all not cast in stone: it is a social institution, developed in a specific historical context, which will continue to evolve in the future.

On the other hand, however, our capacity to answer these questions is uncertain, for several reasons. Firstly, a danger is to oversee human agency. History remains to be written, and decisions, to be taken by societies and individuals. How much climate change will be avoided through international cooperation? How much international solidarity will be shown in adapting to climate change? These questions, which remain unanswered, will obviously affect the impact that climate change will have on international law. Secondly, climate change itself will have an uncertain impact on human societies. At the very core of the concept of *adaptation* lays the idea that vulnerability depends not only upon physical exposure to climate-related events, but also upon human resilience. Large uncertainties remain for instance as to the capacity of technological innovation to contribute to adaptation and balance some of the impacts of climate change. Thirdly, the impact that climate change will have on international law does not happen in the conditions of a laboratory, all other things being equal. Other factors will transform international law in the decades to come. The rise of Asia, in particular, will interfere between climate change and international law. In these circumstances, it seems, any prediction as to the consequences that climate change and its governance will have on the structure of international law is likely to be limited to pure speculation.

Unsurprisingly, this book did not (could not) fulfill its promises. Rather than a book on international law in the era of climate change, Rayfuse and Scott ended up editing a more classical book on the international responses to climate change, looking at a multitude of rules, spread in diverse legal fields. This is interesting in itself, yet less attractive than what was promised.

Reviewed by Benoît MAYER