

Research Handbook on Climate Change Mitigation Law: A Global Examination of Current Trends and Historical Developments

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The new collection “Research Handbook on Climate Change Mitigation Law”¹ compiles more than two-dozen academic papers on the titular subject, which combine to give a modern history of the field while painting a picture of its current state. Editors Geert Van Calster, Wim Vandenberghe, and Leonie Reins intended the book as a framework, rather than a comprehensive guide, to the subject of climate change mitigation law. Nevertheless, it provides an enormous volume of information that can be used to compare different policy approaches to climate change. Though frequently challenging, its wide array of subjects and viewpoints has much to offer the interested reader.

Truly global in its perspective, the book comprises a collection of academic papers on interrelated topics. It attempts to give an overview of the various policies and court decisions that constitute climate change mitigation law, a relatively new and constantly evolving field. While much of the collection reads like a history book, it tells a story that is still being written. Despite the changing landscape, the authors do their best to indicate where things might be headed, often framing the issues in terms of observable trends.

The book is organized by both region and subject matter. It contains ten parts, all but two of which are divided into three chapters. In turn, each chapter focuses on one of the same three geographic regions—the European Union (EU), United States (US), and Asia-Pacific. Each of the first six parts discusses a different sector of climate change law through the lenses of these three geo-political regions. The sectors are energy, transport, buildings, industry, LULUCF (land use, land use change and forestry), and waste management. This comparative

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¹ RESEARCH HANDBOOK ON CLIMATE CHANGE MITIGATION LAW (Geert Van Calster, Leonie Reins & Wim Vandenberghe eds., Edward Elgar Publ’g 2015).

approach purports to further the book's goal of providing a wide-ranging foray into the complex subject of climate change law. While the symmetry is imperfect, the book ultimately succeeds in providing representative case studies and histories by which to compare various approaches to the issues. Though less cohesive than one might hope, the fragmented nature of the book seems to reflect the complexity of the issues themselves, which defy simple characterization.

The introductory chapter traces the progression of climate change mitigation law through a series of international conferences, protocols, accords, summits, and agreements, beginning with the landmark United Nations Framework Convention on Climate Change (UNFCCC) of 1992. Authors Harro van Asselt, Michael Mehling, and Clarisse Kehler Siebert note that much of international climate change law is built on agreements whose non-binding character makes them the subject of much skepticism.²

Next, Part I explores the energy sector. The EU chapter seems to do little more than illustrate the challenge of summarizing the philosophy or goals of a political entity composed of numerous individual nations. On the other hand, the chapter on the United States was one of the book's highlights. Focusing on one nation allowed author Joel B. Eisen to describe in pointed detail the progression of climate change mitigation law in the energy sector.³ Eisen tells a story of many failures and successes, providing a fitting introduction to the unsteady policymaking cycle that appears to characterize the development of climate change law all over the world.

Parts II through IV deal with some of the more common aspects of climate change, particularly greenhouse gases. Part II discusses transportation. The authors spend considerable space discussing their regions' policies on automobile emissions, giving the section a welcome uniformity. Buildings are the subjects of Part III, which shows some ways in which the private sector has taken a more active role in decreasing emissions, including through voluntary "green" certification programs such as LEED and BREEAM.⁴ Part IV then focuses on policies regulating industrial emissions. Though these chapters may at times seem to delve too deeply into diplomatic and regulatory history to be of great interest to the layperson, many subsequent moments stand out as having potentially broader appeal.

Part V, which comes next, contains one of the better examples. Author Bradley Evans gives an illuminating summation of what makes Asia's situation unique in the context of LULUCF. In "Land use, land use change and forestry: Asia-Pacific," Evans notes that while the region is already among the least

² *Id.* at 3.

³ *Id.* at 52 (describing how federal, state, and local policies have developed in the absence of a comprehensive national scheme for climate change mitigation).

⁴ *Id.* at 183.

forested in the world, its continuing transformation from a collection of largely agrarian societies into an industrialized “factory to the world” is likely to place greater stress on the environment.⁵ Evans’ subsequent analysis of Australian, Chinese, and Indonesian policies on deforestation and land conversion has a decidedly technical feel. The bigger takeaway—that local conditions can make global policies or approaches somewhat monolithic—is not specifically stated. Nevertheless, like many of the book’s greater lessons, it’s one that an attentive reader can find rather easily between the lines.

Another interesting observation comes from the next section, Part VI, which deals with waste management. In “Climate mitigation and waste management in the Asia-Pacific,” author Karen Hussey points out that many developing nations are still in the process of implementing basic waste management services.⁶ As a result, their priorities are more fundamental issues like sanitation and public health, rather than climate change.⁷ Her analysis highlights the difficulties facing multi-national policymakers like the UN, which must account for variations in the levels of development and infrastructure among member states.

Having discussed the six major sectors regulated by climate change law, the book then moves on to the topics of carbon trading (Part VII), climate finance (VIII), and climate change litigation (IX).

Part VII feels somewhat dispensable, being that carbon trading had already been discussed in previous chapters. As one of the most widely adopted methods for combating climate change, carbon trading surfaced frequently. Despite expressions of optimism about its potential, the authors often seemed ambivalent about the overall effectiveness of current carbon trading schemes.

Part VIII, on climate finance, is the shortest section. It contains articles on climate finance in the EU and Asia-Pacific, but not the US. It lacked clear examples that serve to really illuminate a subject, ultimately leaving me with more questions than answers. For example, the chapter on Asia failed to define a certain acronym—which turned out to represent a Japanese governmental agency—until it had already appeared a number of times, highlighting a lack of clarity regarding the identities of the various parties involved in climate finance.

Among the most interesting sections—and potentially the most useful, from a practitioner’s perspective—is Part IX, which focuses on climate change litigation. Its chapters on the EU and US match up particularly well for comparison, as the respective authors of each section give analyses similar in scope. In “EU climate change litigation: all quiet on the Luxembourgian front?,” author Sanja Bogojevic first reiterates the difficulty of trying to accurately sum up the litigation climate of a political entity composed of dozens of autonomous

⁵ *Id.* at 345.

⁶ *Id.* at 408.

⁷ *Id.* at 409.

nations, each with its own judicial system.⁸ According to Blogojevic, maintaining this balance is a substantial goal of EU climate change decisions.⁹ He observes that the EU's courts have demonstrated a reluctance to hear cases involving private-sector plaintiffs, even those concerning its general cap-and-trade program.¹⁰

On the other hand, US courts grant significant access to private entities challenging environmental regulations, according to author Michael B. Gerrard. In "Climate change litigation in the United States," Gerrard notes that courts in the US have decided more climate change lawsuits than those of the rest of the world combined.¹¹ Gerrard's article contains another salient observation, which is that the federal government took little action on climate change during the eight-year administration of George W. Bush.¹² In terms of litigation, this meant that lawsuits were relatively few in number—since suits are usually filed in response to new regulations. But in the bigger picture, it says something else: attitudes and policies toward climate change vary not only among nations but also from one political administration to the next. The unstated message is that despite a growing worldwide interest in taking action on climate change, there are no guarantees when it comes to governmental policies. Once again, the most important takeaway seems to lie just beyond the text itself.

The final section (Part X), entitled "Climate Change in the BRICS Countries," contains one article each on climate change law in Brazil, Russia, India, China, and South Africa. One especially interesting detail was Ronaldo Seroa da Motta's assertion that one of Russia's chief objectives in implementing environmental policies is improving its geo-political reputation, regardless of any benefits to the environment.¹³ This served as a sobering reminder that mitigating the effects of climate change is not always the primary goal of policies that ostensibly aim to do so.

The book concludes abruptly with the chapter on South Africa, neglecting to include a closing chapter to tie the book together. Though such a conclusion might have felt tacked-on, considering the incredible breadth of subject matter, its omission reinforced the overall lack of cohesiveness. The fact that the editors undertook to compile this multitude of perspectives suggests that they see some common threads, and a conclusion would have been an excellent place to flesh those out.

The collection's general disjointedness manifested itself in a number of ways, one of which was an unfortunate redundancy. For example, the reader is

⁸ *Id.* at 545.

⁹ *Id.* at 557.

¹⁰ *Id.* at 549.

¹¹ *Id.* at 560.

¹² *Id.* at 562.

¹³ *Id.* at 633.

introduced to both the EU's Emissions Trading Scheme (ETS) and California's AB-32 numerous times. Such repetition highlighted the downsides of a work that compiles essays from various authors rather than commissioning a single author to do the job; a more streamlined approach would likely have made for a more enjoyable and efficient book. Nevertheless, if the ultimate goal was to explicate the various approaches toward these global issues, it seems logical to do so through a number of different voices, even if the result is an occasionally redundant and cumbersome read.

In general, I found the sections on the US particularly insightful—and not just because of their relevance to me as an American. Setting their sights on one nation invited the authors to dive deeper into their subject, and the US sections seemed to contain more vivid examples of climate change law in practice. For example, the energy sector chapter examined various rebates offered by San Diego Gas & Electric, a large utility, in order to promote energy efficiency among its residential customers. From these kinds of specific anecdotes, readers may be able to draw more lasting, and ultimately useful, conclusions. At times throughout, the EU and Asia-Pacific subjects simply felt too large.¹⁴ Although authors often subdivided these mega-regions into particular nations through interesting case studies, it seemed incongruous when chapters invoking entire continents in their titles went on to focus on only two or three small nations.

Overall, the book gives a valuable introduction to a field with which many readers may be unfamiliar; however, some may ultimately find that it misses the forest for the trees. The title “handbook” in itself is misleading, as it does not operate by defining the terms and strategies up-front and then employing them in context. Instead, as a collection of individual academic papers, it jumps straight into dense case studies. As a relative neophyte to climate change law, I initially found this approach somewhat disorienting. However, I eventually came to appreciate the book's focus on in-depth analyses, even if it came at the expense of background information. After all, a quick Google search can give the definition of “carbon sink”—this handbook does something more difficult, and ultimately more fulfilling. By presenting papers in which authors explored their subjects at length, the collection feels as close to comprehensive as could be expected on a topic so broad. Though reaching its most thought-provoking parts requires patience, readers with a serious interest in climate change mitigation law will likely find the effort worthwhile.

¹⁴ See, e.g., *id.* at 288-299 (where article on industry in Asia-Pacific focused on overarching questions but contained few details concerning particular national policies), 86-100 (where the article included to represent the energy sector in Asia-Pacific focused only on China), and 33-50 (where section on energy policy in the EU did little to explore the effects of the overall policies on individual nations within the EU).