The Evolution of Differential Treatment in International Climate Law: Innovation, Experimentation, and 'Hot' Law

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Abstract

The UN climate regime is a domain of international environmental law (IEL) that has developed in distinctive ways. Applying insights from the work of Michel Callon, climate change is a 'hot' situation characterized by ongoing controversy, making it difficult to develop stable and sustainable legal frameworks to manage this state of flux. Building on Elizabeth Fisher's work positing that environmental law has qualities of 'hot' law, this article argues that, in the context of the UN climate regime, the 'hot' nature of climate law is compounded by the geopolitical tensions among states in IEL, particularly the deep fault lines between developed and developing states. The novel legal and regulatory solutions that have been experimented with to address issues of differential treatment reflect attempts to manage and contain these ongoing controversies. The UN climate regime yields insights into the promises and pitfalls of designing international legal frameworks to respond to highly contested and divisive issues in a context in which states create, implement, and enforce legal rules.

Keywords

UNFCCC; Kyoto Protocol; Paris Agreement; 'hot' law; North-South politics; differential treatment

1. Introduction

The international climate regime continues to generate significant legal scholarly interest. Two reasons for this sustained interest are the regime's pivotal role in global efforts to mitigate and adapt to climate change, and its evolving legal and regulatory design. This article is primarily concerned with the latter motivation for climate law research. It focuses on the UN climate regime, which comprises the UNFCCC, its Kyoto Protocol, the Paris Agreement, and the decisions of the parties to these agreements. This regime has a 'convoluted' history,[1] and its legal frameworks have evolved from relatively vague provisions in the UNFCCC, to binding targets for industrialized countries under the Kyoto Protocol, to obligations of conduct (but not result) under the Paris Agreement.[2] There is a high degree of legal creativity and experimentation evident in the UN climate regime,[3] resulting in design choices that are distinctive compared to other areas of international environmental law and public international law more broadly. Accordingly, this regime warrants ongoing and deeper

[1] David A. Wirth, 'The Paris Agreement as a New Component of the UN Climate Regime', 12(4) *International Organisations Research Journal* 185 (2017), at 196.
[2] Daniel Bodansky, Jutta Brunnée, and Lavanya Rajamani, *International Climate Change Law* (Oxford: Oxford University Press, 2017), at 22.
[3] Ibid., at 17-30.

exploration as a domain of IEL that yields new insights into options for legal and regulatory design in global governance.

This article builds upon analyses of 'hot' law in domestic environmental law contexts, and argues that this concept valuably illuminates innovation under the UN climate regime. Callon argues that in 'hot' situations the knowledge base, actors, interests, and predictions of future scenarios are all characterized by controversy and fluctuation.[4] Applying insights from Callon's work, Fisher posits that environmental law can be seen as 'hot' law, as it 'is directly concerned with "hot situations" in which the agreed frames, legal and otherwise, for how we understand and act in the world are in a constant state of flux and contestation'.[5] Fisher and her co-authors have analysed and illustrated the ways in which this understanding of 'hot' law applies in the context of, inter alia, domestic legal frameworks and obligations pertaining to environmental impact assessment,[6] judicial review of planning and environment cases,[7] and climate change litigation.[8] Compared to these detailed analyses of primarily domestic environmental law issues, there has been a relative paucity of analysis of the extent to which IEL reflects characteristics of 'hot' law. This article contributes to addressing this gap with a focus on the UN climate regime.

I argue that the 'hot' nature of climate change, which poses an ongoing challenge to legal stability,[9] is compounded in the UN climate regime due to the entrenched political divisions and contestation among states, particularly along North-South fault lines. The law typically facilitates stability in situations in which agreement can be reached on the relevant actors, factual conditions, interests, preferences, and responsibilities that apply.[10] In the UN climate regime, reaching agreement on each of these factors has proven to be controversial. Perhaps to an even greater extent than in domestic settings, political considerations come to the fore in international law, as states are the creators and enforcers, as well as the subjects and agents, of international legal rules.[11] Moreover, North-South tensions pervade IEL.[12] Employing the concept of 'hot' law in this context underscores the link between the legal and regulatory experimentation in

[4] Michel Callon, 'An Essay on Framing and Overflowing: Economic Externalities Revisited by Sociology', in *The Laws of the Markets*, edited by Michel Callon (Oxford: Blackwell, 1998), at 260.
[5] Elizabeth Fisher, 'Environmental Law as "Hot" Law', 25(3) *Journal of Environmental Law* 347 (2013), at 347-8.
[6] Elizabeth Fisher, 'Environmental Impact Assessment: "Setting the Law Ablaze"', in *Research Handbook of Fundamental Concepts of Environmental Law*, edited by Douglas Fisher (Edward Elgar, 2016), at 422-48.
[7] Elizabeth Fisher, '"Jurisdictional" Facts and "Hot" Facts: Legal Formalism, Legal Pluralism, and the Nature of Australian Administrative Law', 38 *Melbourne University Law Review* 968 (2015).
[8] Elizabeth Fisher, Eloise Scotford, and Emily Barritt, 'The Legally Disruptive Nature of Climate Change', 80(2) *Modern Law Review* 173 (2017).
[9] Ibid., at 175.
[10] Callon, supra note 4, at 261.
[11] For example, Waldron notes that 'the state is not *just* a subject of international law; it is additionally both a *source* and an *official* of international law': Jeremy Waldron, 'The Rule of International Law', 30 *Harvard Journal of Law and Public Policy* 15 (2006), at 23 (emphasis in original).
[12] See, e.g., Lavanya Rajamani, *Differential Treatment in International Environmental Law* (Oxford: Oxford University Press, 2006); Shawkat Alam, Sumudu Atapattu, Carmen G. Gonzalez, and Jona Razzaque (eds), *International Environmental Law and the Global South* (Cambridge, UK: Cambridge University Press, 2015).

the UN climate regime, and the challenges of developing stable legal frameworks that seek to accommodate and manage disagreement among states on fundamental climate change issues. It also explains why the UN climate regime is likely to continue to evolve and why it deserves ongoing legal scholarly attention as a distinctive domain of IEL.

In this article, Section 2 outlines the characteristics of 'hot' situations and 'hot' law, and argues that these concepts are apposite for understanding the evolution of the UN climate regime. Section 3 analyses the legal innovations designed to delineate the roles and responsibilities of developed and developing states under the UNFCCC, the Kyoto Protocol, and the Paris Agreement. This short article cannot be an exhaustive analysis of these developments or of the range of innovations under the UN climate regime. Rather, the examples provided here are intended as 'snapshots' to illustrate the types of legal and regulatory creativity evident in response to the ongoing contestation among states—over facts, responsibilities, and appropriate legal responses—in this regime.

2. 'Hot' Situations and 'Hot' Law in the UN Climate Regime

I view the UN climate regime as a subset of IEL and public international law that has developed in distinctive ways due to the 'hot' nature of international climate law.[13] Before proceeding to analyse specific innovations in the UN climate regime, the concept of 'hot' situations requires further explanation. Fisher, Scotford, and Barritt, in their article focusing on climate change adjudication, identify climate change as a 'hot' situation leading to 'hot' law.[14] This argument builds on the work of Callon, who posits that 'hot' situations are those where

> everything becomes controversial: the identification of intermediaries and overflows, the distribution of source and target agents, the way effects are measured. These controversies which indicate the absence of a stabilized knowledge base, usually involve a wide variety of actors. The actual list of actors, as well as their identities, will fluctuate in the course of a controversy itself and they will put forward mutually incompatible descriptions of future world states.[15]

Climate change is a quintessential 'hot' situation, which 'poses significant and arguably unprecedented challenges for legal systems'.[16] The factors that contribute to the 'hot' nature of climate change include polycentric causes and impacts, ranging from the local to the global; limits inherent in predicting the future impacts of climate change; the socio-political conflict that surrounds it; and the need for the development of legal

[13] The institutional arrangements in IEL have long diverged from those in other areas of international law: see, e.g., Robin R. Churchill and Geir Ulfstein, 'Autonomous Institutional Arrangements in Multilateral Environmental Agreements: A Little-Noticed Phenomenon in International Law', 94 *American Journal of International Law* 623 (2000). For debates on whether principles of general international law should apply to the UN climate regime, see, e.g., Alexander Zahar, 'Mediated versus Cumulative Environmental Damage and the International Law Association's Legal Principles on Climate Change', 4(3-4) *Climate Law* 217 (2014); Benoit Mayer, 'Construing International Climate Change Law as a Compliance Regime', 7(1) *Transnational Environmental Law* 115 (2018); and Zahar and Mayer's debate in this issue.
[14] Fisher et al., supra note 8, at 177.
[15] Callon, supra note 4, at 260.
[16] Fisher et al., supra note 8, at 178.

regimes that are responsive to an unstable physical environment.[17] For these reasons, climate change challenges the stability of legal orders, including international climate law.[18]

'Hot' situations can be contrasted with 'cold' situations, in which it is much easier to agree on the relevant actors with a stake in a problem, their interests and preferences, and the rights and responsibilities that apply.[19] Law facilitates 'calculated decisions' and stability in 'cold' situations; for example, in contract law the parties' interests, rights, and responsibilities typically can be identified and stabilized.[20] In contrast, the law is likely to continually evolve in 'hot' situations characterized by controversy. The concept of 'hot' law relates to, yet is distinct from, analyses of climate change as a 'super wicked'[21] or 'complex'[22] problem as it highlights that legal frameworks are also the subject of contestation and flux, alongside the phenomenon of climate change itself. Climate change generates legal disruption,[23] subverting the traditional role of law in providing stability and accommodating incremental, calculable change.[24]

In 'hot' situations, legal decision-making and the facts upon which legal decisions are based fluctuate.[25] As a result, 'hot' law may emerge in which 'legal frameworks must evolve or new authoritative legal frames must be developed so as to accommodate the number and variety of parties and the relevant contested facts and politics'.[26] Fisher, Scotford, and Barritt note that a consequence of the legally disruptive nature of climate change has been the creation of new international law agreements.[27] Moreover, they observe that, since the Paris Agreement was adopted in 2015, 'the UNFCCC regime ... is becoming more hybrid and multi-level in its legal architecture and less centered on a set of international rules formulated in a single treaty'.[28] The following section builds upon these observations by analysing the changing approaches to differential treatment as an exemplar of 'hot' law in the UN climate regime.

I argue that the political divisions among states—and particularly those between developed and developing states—exacerbate the challenges for the international legal system in responding to climate change. That is, the 'hot' situation posed by climate change is compounded by the controversies pervading the geopolitical context in which negotiations among states occur. This context reflects the ongoing legacies of

[17] Ibid., at 175.
[18] Ibid., at 181-2.
[19] Ibid., at 261.
[20] Ibid., at 255, 261.
[21] See, eg, Chris Hilson, 'It's All about Climate Change, Stupid! Exploring the Relationship between Environmental Law and Climate Law', 25(3) *Journal of Environmental Law* 359 (2013).
[22] See, eg, Jutta Brunnée, 'The Rule of International (Environmental) Law and Complex Problems' in *The International Rule of Law: Rise or Decline?*, edited by Heike Kreiger, Georg Nolte, and Andreas Zimmermann (forthcoming, 2019).
[23] Fisher et al., supra note 8, at 176-7.
[24] See, eg, Jeremy Waldron, *The Rule of Law and the Measure of Property* (Cambridge, UK: Cambridge University Press, 2012), at 53; Roscoe Pound, *Interpretations of Legal History* (Harvard, Massachusetts: Harvard University Press, 1923), at 1.
[25] Callon, supra note 4, at 261.
[26] Fisher et al., supra note 8, at 177-8.
[27] Ibid., at 181.
[28] Ibid., at 182.

colonialism, as well as the historical and increasing material and political inequalities among states.[29] Within the UN climate regime, particular sources of contestation between developed and developing states include the industrialized countries' greater responsibility for historical emissions, national variations in wealth and greenhouse gas emissions, the disproportionate vulnerability of the poorest populations in developing countries to adverse climate change impacts, and diverging conceptions of fairness and ethics.[30] Since the inception of international climate law and policy, this politically charged context has intensified the inherently 'hot' nature of climate change.

3. 'Hot' Law and Evolving Approaches to Differential Treatment

Developing sustainable international legal rules on climate change that facilitate stability and contain the disagreements among states has proven to be challenging. This is illustrated by the strongly divergent approaches to differential treatment in the UNFCCC and the Kyoto Protocol, compared to the Paris Agreement. The approaches experimented with under these agreements at times depart from those evident in other multilateral environmental agreements, exemplifying the development of innovative legal mechanisms to respond to a continuing controversy.

Throughout the history of the UN climate regime debates about the respective roles of developed and developing countries have been highly politically charged. In attempting to clarify the rights and responsibilities that apply, novel legal solutions have emerged. Since the time of the UNFCCC negotiations in the 1990s, developing states have argued that the historical responsibility for climate change lies with industrialized countries, and have resisted binding emission-reduction commitments.[31] In contrast, a recurring theme for developed states—most notably the United States—has been concern about a non-level playing field and a resulting competitive disadvantage in the absence of 'meaningful participation' by developing countries and mitigation obligations that apply to all major economies.[32] These divergent interests, preferences, and conceptions of fairness between the two groups of states epitomize a 'hot' situation. The initial legal response was to enshrine differential treatment for developed and developing countries in the central treaty provisions of the UNFCCC and the Kyoto Protocol.[33] The fact that the core mitigation obligations under these treaties apply to Annex I states only is a unique manifestation of the principle of CBDR in IEL.[34]

[29] Antony Anghie, *Imperialism, Sovereignty and the Making of International Law* (Cambridge, UK: Cambridge University Press, 2005); Rajamani, supra note 12, at 2-3.
[30] Lavanya Rajamani, Jutta Brunnée, and Meinhard Doelle, 'Introduction: The Role of Compliance in an Evolving Climate Regime', in *Promoting Compliance in an Evolving Climate Regime*, edited by Jutta Brunnée, Meinhard Doelle, and Lavanya Rajamani (Cambridge, UK: Cambridge University Press, 2012), at 2; Friedrich Soltau, *Fairness in International Climate Change Law and Policy* (Cambridge, UK: Cambridge University Press, 2009); Stephen M Gardiner, *A Perfect Moral Storm: The Ethical Tragedy of Climate Change* (Oxford: Oxford University Press, 2011).
[31] Rajamani, supra note 12, at 216-17.
[32] Ibid., at 217-22.
[33] UNFCCC, Art. 4(2), and Kyoto Protocol, Art. 3.
[34] Rajamani, supra note 12, at 93. Other types of approach to differential treatment evident in IEL include provisions that differentiate between industrial and developing countries with respect to the implementation of treaty commitments, and provisions that grant assistance, including financial and technological assistance, to developing countries: ibid.

Whilst this novel approach to differential treatment attempted to frame and manage the divisions between developed and developing states, it has remained a source of deep discord within the regime. For example, the United States' refusal to ratify the Kyoto Protocol in 2001 can 'in large part' be traced to a concern about parties' differentiated obligations under the Protocol.[35] Over time, starkly differentiated mitigation obligations came to be viewed as entrenching a 'debilitating divide'[36] that could not be sustained. At the eighth CMP in Doha in December 2012, a significantly reduced number of states, accounting for 22 per cent of global emissions,[37] committed to a second Kyoto Protocol commitment period from 2013 to 2020.[38] In response to intense criticism of the rigid 'top-down' structure of the Kyoto Protocol and its lack of universal coverage, Convention parties became increasingly convinced that a successor agreement would need to be negotiated to gain the support of key states.[39] Differentiation continued to be 'Perhaps the most divisive overarching issue' in the subsequent negotiations for the Paris Agreement,[40] resulting in a search for new legal solutions.

In the Paris Agreement negotiations, developed parties contended that the rigid, annex-based approach to differentiation in the UNFCCC and Kyoto Protocol was no longer justifiable because the 'economic and political realities' have evolved since these treaties were negotiated.[41] Of course, developing countries have never been a homogenous group; the needs and interests of least-developed countries and small-island states diverge significantly from those of large developing economies such as China, India, and Brazil, and from comparatively wealthy developing countries such as Kuwait, Saudi Arabia, Singapore, South Korea, and Qatar.[42] The rapid economic growth of 'emerging economies' such as Mexico, South Korea, Chile, Brazil, China, and India, and their increasingly significant contributions to cumulative global

[35] Rajamani, supra note 12, at 221-2, citing the text of a 'Letter from the President to Senators Hagel, Helms, Craig, and Roberts, The White House, Office of the Press Secretary', 13 March 2001. President George W. Bush also cited the 'incomplete state of scientific knowledge of the causes of, and solutions to, global climate change' as a reason for his opposition to the Kyoto Protocol, typifying the controversy over facts and science in 'hot' situations: ibid. See also Senate Resolution 98, 105th Congress (1997-1998).
[36] Wirth, supra note 1, at 197.
[37] This figure was cited in Lavanya Rajamani, 'The Durban Platform for Enhanced Action and the Future of the Climate Regime', 61(2) *International and Comparative Law Quarterly* 501 (2012), at 516.
[38] However, the Doha Amendment is yet to legally enter into force: United Nations Treaty Collection, 'Chapter XXVII Environment: 7.c Doha Amendment to the Kyoto Protocol' (2018), <https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XXVII-7-c&chapter=27&clang=_en>.
[39] Wirth, supra note 1, at 196-7.
[40] Bodansky et al., supra note 2, at 219.
[41] Lavanya Rajamani, 'The Devilish Details: Key Legal Issues in the 2015 Climate Negotiations', 78(5) *Modern Law Review* 826 (2015), at 837-8. Indeed, the UNFCCC was the last of the series of post-World War II international treaties and legal instruments which recognized and prioritized economic growth for developing states as a central treaty objective, with subsequent agreements being more explicitly reciprocal in character: Shyam Saran, 'Irresistible Forces and Immovable Objects: A Debate on Contemporary Climate Politics' 10(6) *Climate Policy* 678 (2010), at 679.
[42] Daniel Bodansky and Lavanya Rajamani, 'The Evolution and Governance Architecture of the United Nations Climate Change Regime', in *Global Climate Policy: Actors, Concepts, and Enduring Challenges*, edited by Urs Luterbacher and Detfel F. Sprinz (Boston, Massachusetts: The MIT Press, 2018).

emissions,[43] meant that departing from the UNFCCC's anachronistic annex structure ranked as a 'top priority' for developed countries in the Paris Agreement negotiations.[44] Although many developing countries still argued that the UNFCCC's annex-based divisions were equitable, and should be maintained, this view did not prevail.[45] It was ultimately agreed that the principle of CBDRRC enshrined in the UNFCCC should be interpreted flexibly in the light of different national circumstances.[46] This aligns with Callon's observation that in 'hot' situations, 'The actual list of actors, as well as their identities, will fluctuate in the course of a controversy itself'.[47]

Against this backdrop, the Paris Agreement's approach to differential treatment reflects another innovative attempt to respond to the ongoing controversy about the roles and responsibilities of developed and developing states. The Paris Agreement replaces top-down differentiation with regard to mitigation obligations with a new paradigm of universal coverage[48] and bottom-up 'self-differentiation' as parties select their own contributions in the light of their national circumstances.[49] Unlike the UNFCCC and Kyoto Protocol, which differentiate between the commitments of different categories of parties, the Paris Agreement operationalizes the principle of CBDRRC by tailoring differentiation to the key pillars of the regime: mitigation, adaptation, finance, technology, capacity building, and transparency.[50] These significant departures from past practices underscore the difficulty of creating stable legal frameworks to manage the intertwined controversies surrounding climate change and North-South politics in the UN climate regime.

The Paris Agreement's model of self-differentiation is not unfettered, as the agreement creates normative expectations for progressively stronger action over time, providing a further example of 'hot' law. Unlike the bifurcated obligations under the Kyoto Protocol, the Paris Agreement imposes a collective obligation on all parties to hold 'the increase in the global average temperature to well below 2°C above pre-industrial levels and to pursue efforts to limit the temperature increase to 1.5°C above pre-industrial levels'.[51] A key mechanism for achieving this commitment is through the parties' successive and progressively strengthened NDCs, covering five-year increments.[52] In the light of CBDRRC and different national circumstances, each party's successive NDC 'will' represent a progression beyond the party's current NDC and reflect its highest possible ambition.[53] This architecture is durable, and represents a 'new

[43] By 2012, China was the largest emitter in the world, and developing countries' collective emissions outstripped those of the developed countries: Daniel Bodansky, 'The Paris Climate Change Agreement: A New Hope?', 110(2) *American Journal of International Law* 289 (2016), at 298.
[44] Ibid., at 299.
[45] Ibid.
[46] Paris Agreement, preamble and Articles 2.2, 4.3, 4.19.
[47] Callon, supra note 4, at 260.
[48] As of 10 September 2018, the Paris Agreement has 180 parties, whilst the UNFCCC has been ratified by 197 parties.
[49] Rajamani, supra note 41, at 852.
[50] Lavanya Rajamani, 'Ambition and Differentiation in the 2015 Paris Agreement: Interpretative Possibilities and Underlying Politics', 65(2) *International and Comparative Law Quarterly* 493 (2016), at 509.
[51] Paris Agreement, Art. 2.
[52] Ibid., Art. 4.
[53] Ibid., Art. 4(3).

paradigm' for catalysing increasingly ambitious global action on climate change.[54] The mechanism attempts to manage the 'hot' nature of international climate law by pragmatically accommodating both the political disagreements evident in the Paris Agreement negotiations and the need for enhanced collective action on climate change.

Despite the diverse approaches to addressing differentiation under the UNFCCC, Kyoto Protocol, and Paris Agreement, it remains a highly contentious and divisive issue that continues to strongly shape the evolution of the UN climate regime. Even though the drafting of the Paris Agreement accommodated the US position on key issues relating to differential treatment, in June 2017 the United States announced its intention to withdraw from the agreement. The stated rationale included the perceived unfairness in the commitments of 'the world's leading polluters', such as India and China, when compared with those of the United States.[55] Differentiation also remains a contentious issue in the ongoing negotiations for the Article 15 compliance mechanism, with some developing countries arguing for a reversion to strict differentiation that is 'consistent with the differentiation between UNFCCC Annex I and non-Annex I Parties'.[56] In contrast, some developed states remain adamant that the Article 15 mechanism 'will be equally applicable to all Parties', taking national capabilities and circumstances into account on a case-by-case basis.[57] Furthermore, there is a risk that divisions among states may resurface in the political phase of the Talanoa Dialogue,[58] which aims to bring a constructive and cooperative style of discussion to the important task of ratcheting up the parties' mitigation ambition as reflected in their NDCs and lay a foundation for the global stocktake under Article 14.[59] Thus, despite a sustained search for legal solutions, the respective roles and responsibilities of developed and developing states presents a challenge that is difficult to manage in the various legal frameworks that have been experimented with under this regime.

4. Conclusion

The legal and regulatory design of the UN climate regime is complex, contested and evolving. So too are the nature of the problem to which the regime responds, and the geopolitical factors shaping international negotiations. This short article has argued that the concept of 'hot' situations leading to 'hot' law helps to account for the legal innovation and change in the regime, as political divisions among states intensify the controversies surrounding climate change. This is exemplified by the flux in the legal

[54] Bodansky, supra note 43, at 290.
[55] Statement by President Trump on the Paris Climate Accord, 1 June 2017, <www.whitehouse.gov/briefings-statements/statement-president-trump-paris-climate-accord/>.
[56] Party Submission to APA 1.4, 'LMDC Submission on Modalities and Procedures for the Effective Operation of the Article 15 Committee to Facilitate Implementation and Promote Compliance', 1, <https://unfccc.int/sites/default/files/lmdc_submission_on_art_15_implementation_and_compliance_mechanism__30_sep_2017_-_final.pdf>.
[57] Party Submission to APA 1.4, 'Submission by the Republic of Estonia and the European Commission on Behalf of the European Union and its Member States', 1, <www4.unfccc.int/Submissions/Lists/OSPSubmissionUpload/783_360_131520098475512553-EE-09-10-APA7%20EU%20Submission%20on%20Art%2015%20para%202.pdf>.
[58] This risk will be especially acute if there is inadequate execution of the preparatory phase.
[59] Feja Lesniewska and Linda Siegele, 'The Talanoa Dialogue: A Crucible to Spur Ambitious Global Climate Action to Stay within the 1.5°C Limit', 12(1) *Carbon and Climate Law Review* 41 (2018), at 45.

frameworks designed to address differential treatment in the UN climate regime. As this example underscores, there have been significant challenges in designing legal frameworks that are stable and viable, whilst promoting the environmental aims of the regime.

The 'hot' nature of international climate law helps to explain why it is a distinctive domain of IEL and public international law, providing fertile ground for scholarly analysis. The changing legal rules within the UN climate regime may prove to have significant practical consequences in terms of future climate impacts. They also warrant further inquiry to better understand options for—and the potential limits of—sustainable legal and regulatory design in highly politically charged domains of international law.