

Contents

1	Introduction	1
1.1	Climate Conflicts: A Disputed Term	1
1.1.1	The Climate Component	5
1.1.2	The Legal Component	6
1.2	Aim of the Analysis	7
1.3	Methodology	8
1.3.1	Bangladesh: As an Example Throughout the Analysis	8
1.3.2	Challenge	10
1.4	Synopsis	11
1.4.1	Climate Conflicts: The Pathways	12
1.4.2	State Responsibility	12
1.4.3	Climate Conflicts and International Environmental Law	13
1.4.4	Legal Consequences	13
1.4.5	Climate Change and the Use of Force	14
1.4.6	Climate Conflicts and International Humanitarian Law	14
1.4.7	Definition of Climate Conflicts	15
	References	16
2	Climate Conflicts: The Pathways	19
2.1	Physical Consequences of Climate Change	21
2.1.1	Rising Sea Level	22
2.1.2	Natural Disasters	23
2.1.3	Desertification	24
2.2	Social Consequences of Climate Change	25
2.2.1	Climate Change and Conflict	28
2.2.2	Historical Scenarios	30
2.2.3	Present Scenario: Sudan	31
2.2.4	Future Scenario: Bangladesh	33
2.3	Conclusion	35
	References	35

3	State Responsibility	39
3.1	State Responsibility	40
3.1.1	The International Law Commission	40
3.1.2	The ILC-Draft Articles on State Responsibility	42
3.2	Internationally Wrongful Act	45
3.2.1	Breach of an International Obligation: Primary Rules	47
3.2.2	Breach of <i>Ius Cogens</i> and <i>Erga Omnes</i> Norms	49
	References	51
4	Climate Conflicts and International Environmental Law	53
4.1	International Environmental Law	54
4.2	Terminology in International Law	55
4.3	The United Nations Framework Convention on Climate Change	58
4.3.1	Objectives	59
4.3.2	Principles	63
4.3.3	Commitments	68
4.3.4	Conclusion	69
4.4	The Kyoto Protocol	70
4.4.1	The Kyoto Commitments	71
4.4.2	The Conferences of the Parties (COP) and Conference of the Parties Serving as the Meeting of the Parties to the Kyoto Protocol (CMP)	76
4.5	The Geneva Convention on Long-Range Transboundary Air Pollution	79
4.6	Customary International Law	82
4.6.1	The Obligation to Prevent Transboundary Harm	83
4.6.2	Draft Articles on Prevention of Transboundary Harm from Hazardous Activities	86
4.6.3	Draft Principles on the Allocation of Loss in the Case of Transboundary Harm Arising Out of Transboundary Activities	92
4.6.4	The Polluter-Pays Principle	93
4.6.5	Court Opinions	95
4.6.6	Other Rules/Standards of Customary International Law	96
4.7	United Nations Convention on the Law of the Sea (UNCLOS)	100
4.7.1	Diminishment of the Exclusive Economic Zones	101
4.7.2	Responsibility and Liability in UNCLOS	102
4.8	The Lugano Convention and the Basel Convention	104
4.9	Conclusion	105
	References	106
5	Legal Consequences	111
5.1	Invoking State Responsibility	111
5.2	Attribution or Imputability	113

5.3	Fair Attribution of Conduct Creates the Claim Opponent	114
5.3.1	Subjects of International Law: Actors	116
5.3.2	The Victim Becomes the Claimant	124
5.4	Fault, Damage, and Causation	126
5.4.1	Fault	128
5.4.2	Damage	128
5.4.3	Causation	130
5.5	Circumstances Precluding Wrongfulness	133
5.6	Legal Implications	138
5.6.1	Cessation	138
5.6.2	Reparation	139
5.6.3	Joint Liability	141
5.7	The Problems	143
5.8	Conclusion	144
	References	146
6	Climate Change and the <i>Use of Force</i>	149
6.1	Article 2.4 UN Charter	150
6.2	Climate Change and the UN Security Council	151
6.3	Defining Use of Force	153
6.3.1	<i>Use of Force</i> and Armed Conflict	153
6.3.2	UN Resolutions	155
6.3.3	Use of Force: Dynamic or Narrow Interpretation?	159
6.3.4	Article 2.4 UN Charter and the Object of Protection	163
6.3.5	Violations of State Sovereignty	166
6.4	Conclusions Regarding the Violation of Article 2.4 UN Charter	183
	References	185
7	Climate Conflicts and International Humanitarian Law	189
7.1	Crossing the Threshold: <i>Ius in Bello</i>	191
7.2	International Humanitarian Law Relevant to the Environment	194
7.2.1	Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques (ENMOD), 18 May 1977	195
7.2.2	Additional Protocol I to the Geneva Conventions	200
7.3	Other International Provisions Regarding Armed Conflicts and the Environment and Custom	214
7.4	Conclusions Regarding Environmental Warfare and Climate Conflicts	217
7.4.1	Argumentum a Fortiori	219
7.4.2	Climate Change as a Form of War	225
7.4.3	The Possibility of Compensation	226
7.5	Conclusion	228
7.6	Climate Change and the Responsibility to Protect	229
	References	232

8	Definition of Climate Conflicts	235
8.1	Terminological Dilutions in IHL	235
8.2	Peace and Conflict Studies	238
	References	241
9	Conclusion	243